



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 07 मई, 2022 / 17 वैशाख, 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 02nd April, 2022

No. Shram (A) 6-2/2020 (Awards) Dharmshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Dharmshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	71/18	Dei Devi	D.F.O., Joginder Nagar	06-01-2022
2.	380/12	Nanak Chand	E. E. HPPWD, Joginder Nagar	14-01-2022
3.	80/15	Biri Singh	E. E. HPPWD, Joginder Nagar	14-01-2022
4.	195/17	Inder Singh	D.F.O. Suket	21-01-2022
5.	194/17	Kanhaiya Lal	D.F.O. Suket	21-01-2022
6.	193/17	Guna Nand	D.F.O. Suket	21-01-2022
7.	196/17	Raman Chand	D.F.O. Suket	21-01-2022
8.	197/17	Thakur Dass	D.F.O. Suket	21-01-2022
9.	198/17	Hem Raj	D.F.O. Suket	21-01-2022

By order,

R. D. DHIMAN, IAS
Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 71/2018

Date of Institution : 11-07-2018

Date of Decision : 06-01-2022

Smt. Dei Devi w/o Shri Amar Singh, r/o Village Bag Sidhoti, P.O. Baroru, Tehsil Sarkaghat, District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P. . .Respondent .

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, Ld. A.R.

For the Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

“Whether time to time termination of services of Smt. Dei Devi w/o Shri Amar Singh, r/o Village Bag Sidhoti, P.O. Baroru, Tehsil Sarkaghat, District Mandi, H.P. during May, 1995 to February, 2015 and finally during March, 2015 (as alleged by workman) by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the aforesaid employer/management?”

2. Shorn of details, facts pleaded by petitioner in the claim petition are as follows. Service of the petitioner was initially engaged by the respondent on daily waged basis in year 1993 as forest worker without any appointment letter in nursery Sidhoti/Dholu up to 1998. She was engaged in other nurseries from 1998 to 2013. During the aforesaid period her services were terminated from time to time without any notice but she continued to work in the department up to year 2013-14 with some artificial breaks. Breaks were given by the department to not let her complete 240 days in each calendar year for the purpose of continuous services. Despite, the petitioner has claimed to have completed more than 240 days in service. Services of petitioner were finally terminated by the respondent in March, 2015. Respondent has not followed the principle of 'last come first go' as persons namely Love Kumar, Sheela Devi, Chaman Lal, Nirmla Devi, Bimla Devi, Kanta Devi, Purmila Devi, Raj Kumar, Raj Kumari, Surinder Kumar, Bidhi Chand, Shyam Singh, Rani Devi, Prem Singh and Kashmir Singh were retained in continuous service without break and all are junior to the petitioner. Thus, she has claimed violation of Section 25-G of the Act. Further, her services are claimed to be terminated in violation of Section 25-F of the Act as well principle of natural justice. Services of junior persons engaged by the department from 1992 to 1999 are stated to be regularized by the respondent after completion of 10/8 years. During conciliation before the Labour Inspector-cum-Conciliation Officer, Joginder Nagar, respondent filed reply mentioning that petitioner was engaged in year 1995 and she worked up to year 2015. Petitioner thus prayed for setting aside time to time termination from year 1993 to 2015 and final termination in March, 2015 as well reinstatement in service with full back wages, continuity of service, seniority and consequential benefits as also regularization from the date her juniors were regularized.

3. Respondent contested the claim petition by filing reply raising preliminary submissions that petition is not maintainable as no fundamental right of petitioner has been infringed. The petition is stated bad on account of delay and laches on part of petitioner. On merits, it is averred that petitioner was initially engaged as casual labourer in forest department during January, 1994 on seasonal forestry works purely on temporary basis. It is further averred that petitioner never completed 240 days in any calendar year. Up to 2006, petitioner worked on muster roll and bill basis and thereafter from year 2007 to 2015 she worked intermittently on bill basis. Works carried out by the forest department are stated to be seasonal and site specific. It is also averred that sometimes petitioner did not turn up to work at her own sweet will and therefore denied giving artificial breaks to not let her complete 240 days in each calendar year. The principle of 'last come

first go' is stated to have been strictly followed and no fresh hand engaged in place of petitioner. The persons shown in para 3 of claim petition, were engaged in different ranges situated at different locations far away from each other and as such it is wrong to interpret different ranges of workmen seniors or juniors. Further submitted that Sh. Love Kumar was engaged in Joginder Nagar range on 01-02-1998 as per Award passed by the Labour Court and regularized as Forest Worker in view of order of Labour Court. Smt. Sheela Devi is senior to petitioner engaged on part time *w.e.f.* July, 1998. Regarding other junior persons respondent submitted that some persons were engaged on compassionate ground and department has not engaged any person in place of petitioner. Giving fictional breaks to petitioner is denied. Petitioner is stated to have absented from work at her own sweet will and lastly she was engaged by the department on bill basis. It is further averred that since petitioner worked on bill basis as such no seniority list in respect of petitioner was prepared and thus not submitted before the Conciliation Officer. Respondent has prayed for dismissal of the claim petition.

4. Rejoinder was filed by the petitioner denying contents of reply and reiterating the contents of the claim petition. Petitioner specifically denied abandoning the services and she reiterated that department has violated provisions of Section 25-G of the Act.

5. On the pleadings of parties, following issues were framed on 20-09-2019:—

1. Whether time to time termination of services of the petitioner during May, 1995 to February, 2015 and finally during March, 2015 by the respondent is/was illegal and unjustified, as alleged? . . . *OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*
4. Whether the petitioner has no cause of action to file the present case, as alleged? . . . *OPR.*
5. Whether the claim petition is bad on account of delay and laches, as alleged? . . . *OPR.*

Relief.

6. Evidence was led by the parties to the lis in support of their claims. PW1 Smt. Dei Devi petitioner deposed through her sworn affidavit Ex. PW1/A in substratum her case as contained in the claim petition. She also tendered in evidence copy of Division level seniority list of casual labour daily wagers as stood on 31-12-2012 Ex. PW1/B and Division level revised seniority list of casual labour daily wagers as it stood on 30-11-2016. In her cross-examination she denied initial appointment as casual labour in January, 1994 for seasonal work. She also denied giving demand notice after 19 years. She has denied the case of respondent as put in the cross-examination.

7. RW1 Sh. Rakesh Katoch, Divisional Forest Officer, Joginder Nagar Forest Division, Distt. Mandi, H.P. deposed the defence of respondent vide his sworn affidavit Ex. RW1/A, as contained in the reply. He also tendered in evidence copy of mandays chart of petitioner Ex. RW1/B, copy of award dated 13-01-2005 Ex. RW1/C, copy of order dated 09-07-2003 of Hon'ble H.P. Administrative Tribunal Ex. RW1/D, copy of letter dated 27-09-2008 Ex. RW1/E. In cross-examination he has admitted that petitioner was engaged in year 1993. Self stated as casual labour. He admitted that no terms and conditions of engagement in writing or appointment letter was given. He also admitted that work in Forest department is carried out through the year. Further

admitted that Government has not declared the forest department as a seasonal industry. Deposed of not having issued notice to the petitioner for alleged not coming for work at her own. Admitted that petitioner worked on muster rolls from 1993 to 2006 and 2007 onwards allocated work on bill basis. Also admitted that no notice for change in service conditions in terms of Section 9(a) of the I.D. Act, 1947 was given. Admitted that there was no notification directing conversion of daily wages to bill basis. Admitted that Sh. Love Kumar is regularly working in the department. He denied that seniority of daily wages is maintained at Divisional level. Self stated it is maintained at circle level. Deposed that no notice for alleged abandonment of work was given to the petitioner. He denied that fresh appointments were made after the alleged abandonment of work by the petitioner.

8. I have heard learned counsel for the petitioner and learned Deputy District Attorney for the respondent at length and carefully perused the material on record.

9. For the reasons to be recorded hereinafter the findings of this Court on the above issues are as under:—

Issue No. 1	: Yes
Issue No. 2	: As per discussion
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Relief.	: Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1 :

10. Petitioner Smt. Dei Devi in consonance with her pleadings has categorically deposed through her sworn affidavit that she was engaged by the respondent *w.e.f.* May, 1995 and intermittently worked up to February, 2015 as also she could not complete 240 days in each calendar year due to breaks given by the respondent with the intention to debar the petitioner to continuous service. Though, respondent has denied giving fictional breaks, but the mandays chart of petitioner Ex. RW1/B produced on record by the respondent does reveal that she worked for 30 days in January, 1994 and total 160 days in year 1994, 48 days in year 1995, 90 days in year 1996, 55 days in year 1997, 76 days in year 1998, 207 days in year 1999, 93 days in year 2000, 24 days in year 2001, 61 days in year 2002, 83 days in year 2003, 114 days in year 2004, 125 days in year 2005, 58 days in year 2006, she was paid certain amounts in year 2007 *vide* bills, she worked 44 days in year 2008, again she was paid by bills in year 2009, 2010, 2014 and 2015 which last bill is of February, 2015 amounting to Rs. 6600/-. Keeping in view the time period of work between year 1994 till February, 2015 it cannot be said that petitioner was seasonal worker. There is no evidence adduced by the respondent to show that Forest Department has been declared a seasonal industry as required under law. RW1 Sh. Rakesh Katoch, Divisional Forest Officer, Joginder Nagar Forest Division, has admitted that Government has not declared the forest department a seasonal industry. Thus, it can be held that the petitioner was a seasonal worker.

11. Respondent has admitted in his reply that petitioner Smt. Dei Devi was initially engaged as a casual labourer in January, 1994 and respondent pleaded that till year 2006 she worked on muster roll and bill basis and thereafter from year 2007 to 2015 she worked intermittently on bill basis only. RW1 has admitted that work in the forest department is carried out through the year. He has also admitted that no notice for change in service conditions in terms of Section 9(a) of the Act was given. Arbitrarily changing service conditions of the petitioner from daily wages on muster rolls to her working on bill basis without issuance of notice under Section 9(a) of the Act as well Rule 37 of the Industrial Disputes Rules 1974 as applicable to the State of Himachal Pradesh, is impermissible under law. Rule 37 *ibid* provides as under:—

“37. Notice of change.—Any employer intending to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to the Act shall give notice of such intention in Form ‘E’.

The notice shall be displayed conspicuously by the employer on a notice board at the main entrance to the establishment and in the Manager’s Office.

Provided that where any registered trade union of workmen exists a copy of the notice shall also be served by registered post on the Secretary of such union”.

12. Since the change in service condition is impermissible under law without issuance of notice under Section 9-A of the Act and Rule 37 *ibid*, the defence of respondent qua the petitioner’s working on bill basis is rejected.

13. Further, the mandays chart Ex. RW1/B also shows that petitioner was engaged and disengaged arbitrarily without any cogent reasons. The mandays chart Ex. RW1/B coupled with categorical testimony of the petitioner lead this Court to hold that artificial/ fictional breaks were provided to the petitioner by the respondent from May, 1995 till February, 2015 and without any reason petitioner was disengaged/terminated during March, 2015. The time to time termination of the services of petitioner, which are artificial/fictional breaks amount to unfair labour practice in terms of the Fifth Schedule of the Act. This break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Act.

14. Another vital aspect is that petitioner has categorically pleaded and deposed on oath that in March, 2015 at the time of termination of her services principle of ‘last come first go’ was not followed as junior persons named in para 3 of statement of claim were retained in violation of Section 25-G of the Act. Petitioner has proved Divisional level revised seniority list of casual labourers daily wages of Joginder Nagar Forest Officer as stood on 30-11-2016 Ex. PW1/C wherein name of petitioner Smt. Dei Devi figures at serial No.8 with date of engagement 01-05-1995, Sh. Chaman Lal s/o Mani Chand named in para 3 of statement of claim figures at serial No. 16 with date of engagement on 01-04-1998, Bimla Devi w/o Balam Ram named in para No. 3 of statement of claim figures at serial No.40 with date of engagement 01-07-2000, Kanta Devi w/o Dharm Pal figures at serial No. 42 with date of engagement 01-08-2000, Raj Kumar s/o Hari Singh figures at serial No. 106 with date of engagement 01-04-2011 and Kashmir Singh s/o Molak Ram figures at serial No. 123 with date of engagement 01-02-2015. These persons are certainly junior to the petitioner having been engaged after the petitioner and are shown to be casual labourer daily wages vide seniority list Ex. PW1/C as stood on 30-11-2016. Further Budhi Devi w/o Lehan who figures at serial No. 15 in revised seniority list Ex. PW1/C with date of engagement 4-3-1998 is proved to have been offered the post of chowkidar on regularization *vide* letter Ex. PB. Thus, when junior Budhi Devi has been retained in service and even offered appointment *vide* letter Ex. PB dated 31st May, 2017, it proves that junior has been retained in service and principle of ‘last come first go’ envisaged under Section 25-G of the Act stands

violated by the respondent. It is well settled that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason, as held by Hon'ble Supreme Court in **Harjinder Singh v. Punjab State Warehousing Corporation, AIR 2010 SC 1116.**

15. In view of above, it is held that time to time termination of services of the petitioner from year 1995 to February, 2015 and finally during March, 2015 was without complying with the provisions of the Act and as such illegal and unjustified. Issue No. 1 accordingly decided in affirmative.

Issue No. 2 :

16. In view of positive finding on issue No. 1, the break period is to be counted for the purpose of continuous service in terms of Section 25(b) of the Act as also for seniority which shall be reckoned from the date of initial engagement of petitioner. As petitioner has categorically deposed through her affidavit Ex. PW1/A that she was not gainfully employed anywhere from the date of her illegal termination in March, 2015, which fact has not been challenged by the respondent while cross-examining her and as such has gone unrebutted, therefore, deserves to be accepted. The deposition of petitioner is sufficient evidence by a worker to prove her non gainful employment. In this regard reliance is placed upon judgment by our Hon'ble High Court in **Pradhan Baijnath Tea Estate Majdoor Sangh vs. State of Himachal Pradesh & Ors. (2019 LLR 1239)**. The burden shifted upon the respondent to contradict the statement of petitioner by leading cogent, ocular or documentary evidence to disprove her evidence, however that has not been done by the respondent. It has neither been pleaded nor proved on record by respondent that petitioner was gainfully employed during period of litigation after her termination. Hon'ble Supreme Court in **Manorma Verma (Smt.) vs. State of Bihar & Ors., 1995 Apex Court Cases (L&S) 193** has held that once termination is found to be illegal consequential order of grant of back wages must follow unless there are reasons justifying a departure from normal order.

17. Consequently, final termination of the petitioner during March, 2015 is set aside and the period of fictional breaks from May, 1995 to February, 2015 is ordered to be counted for the purpose of continuous service. The respondent is directed to re-engage petitioner forthwith. The petitioner shall be deemed to be in continuous service during breaks period with consequential benefits and 50% back wages from the date of termination till the date of reinstatement. Issue No. 2 is accordingly decided in favour of petitioner.

Issue No. 3 :

18. In view of positive finding on issues No. 1&2, claim petition is held maintainable. Even otherwise, respondent has not established as to how the petition is not maintainable. Issue No. 3 thus decided in negative against the respondent.

Issue No. 4 :

19. Petitioner has proved an enforceable cause of action and findings on issues No. 1 & 2 have been recorded in her favour. Thus, issue No. 4 is answered in negative against respondent.

Issue No. 5 :

20. Respondent has led no evidence proving that claim petition is bad on account of delay and laches on part of petitioner in approaching the Court/resorting to legal remedy. There is no

limitation period prescribed in the Limitation Act, 1963 within which reference is to be made. Law is well settled in this regard. Our Hon'ble High Court in **State of H.P. Anr. vs. Partap Singh, 2016(6) ILR HP 1314** relying upon the judgment of Hon'ble Apex Court in the case **Raghuvir v. G.M. Haryana Roadways Hissar, (2014)10 SCC 301** has held as under:—

"....that there is no limitation for reference to Labour Court under Section 10 of the Act. It was held that words "At any time" mentioned in Section 10 of the Act clearly define that law of limitation would not be applicable qua proceedings of reference under Section 10 of the Act.

"Section 10 of Industrial Disputes Act, 1947:—Reference of dispute to Boards, Courts or Tribunals-(1) where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing, (a) Refer the dispute to a Board for promoting a settlement thereof, (b) Refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry."

21. In **Narain Singh vs. State of H.P. & Ors. 2016 Law Suit (HP) 1013** again Hon'ble High Court of Himachal has turned down the plea of respondent department regarding delay and laches relying upon **Raghuvir v. G.M. Haryana Roadways Hissar (Supra)**. Thus, issue No. 5 is also answered in negative against respondent.

Relief:

22. As a sequel to the findings of this Court on the issues framed, it is held that the time to time termination of services of petitioner/breaks given by the respondent from May, 1995 to February, 2015 and final termination during March, 2015 are illegal, unjustified and shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from the date of initial engagement. The respondent is directed to re-instate the petitioner forthwith. The petitioner shall be deemed to be in continuous service during the breaks period with consequential benefits and 50% back wages from the date of final termination in March, 2015 till her reinstatement. Claim petition is hereby allowed in part and reference is answered accordingly in favour of the petitioner. The parties are left to bear their costs. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of January, 2022.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 380/2012
Date of Institution : 29-11-2012
Date of Decision : 14-1-2022

Shri Nanak Chand s/o Shri Hari Singh, r/o Village Passal, Post Office Chauntra, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Joginder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, Ld. AR
Sh. Vijay Kaundal, Ld. Advocate

For the Respondent : Sh. D. K. Chaudhary, Ld. Dy. D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

“Whether termination of the services of Sh. Nanak Chand s/o Sh. Hari Singh, Village Passal, Post Office Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time as beldar during 5-10-1998 to 31-8-2007 by The Executive Engineer HPPWD Division Joginder Nagar, Distt. Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. Petitioner has pleaded in his statement of claim that he was engaged as daily rated beldar by HPPWD in National Highway Division Joginder Nagar on 05-10-1998. Later he was put in the newly created HPPWD Division Joginder Nagar in February, 2004. The respondent gave fictional breaks to petitioner from date of his initial engagement upto 31-8-2007. Petitioner was issued muster rolls for 15 days in a month from his initial engagement upto 31-8-2007 despite availability of work for entire month. While breaks were given to petitioner, juniors in the same category were allowed to complete 240 days in each calendar year. Juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal were allowed to complete 240 days and some of them have been regularized. Thus, the acts of respondent are stated to be illegal, wrong and against provisions of Sections 25-F, 25-G and 25-H of the Act. It is further pleaded that petitioner requested the respondent many times to stop giving him breaks but respondent did not pay heed to his request. Thus, petitioner prayed for giving benefit of seniority for the fictional breaks period along with back wages as also regularization and other consequential service benefits.

3. Respondent contested the claim by filing reply raising preliminary submissions qua non-maintainability, non-joinder of necessary parties *i.e.* State of H.P. as well Executive Engineer National Highway Division HPPWD Joginder Nagar and petition bad on account of delay and laches on part of petitioner. On merits, respondent admitted engagement of petitioner by the Executive Engineer National Highway Division HPPWD Joginder Nagar *w.e.f.* 10/1998 as also that petitioner and some other workmen were transferred to newly created Division of respondent. Respondent has submitted that workmen mentioned in para 2 of statement of claim, were senior to petitioner and have been regularized in their respective seniority. It is further pleaded that to meet

out exigency natural disaster/calamity respondent had kept permanent gang of beldar/daily waged worker to be deployed in emergency situation. Respondent also submitted that petitioner worked in continuity with Executive Engineer, National Highway HPPWD Division Joginder Nagar and thereafter with the replying respondent till date. Respondent prayed for dismissal of claim of the petitioner.

4. Rejoinder was filed by the petitioner denying contents of the reply of respondent, contrary to the petition.

5. On the pleadings of parties, following issues were framed on 24-4-2013:—

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during 05-10-1998 to 31-08-2007 is illegal and unjustified as alleged? . . . *OPP.*
2. Whether the petition is not maintainable in the present form? . . . *OPR.*
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . . *OPR.*

4. Relief.

6. Learned Predecessor in this Court on 3-7-2013 dismissed the claim petition for want of evidence. However, Hon'ble High Court of H.P. *vide* order dated 10-8-2021 in CWP No. 2347 of 2020 has set aside order dated 3-7-2013 passed by learned Predecessor in this Court and directed this Court to issue fresh notice to the workman concerned to adduce his evidence on the issue and decide the reference within nine months from 10-8-2021.

7. Parties to the lis adduced evidence in support of their claim. Petitioner Shri Nanak Chand appeared as PW1 and deposed his claim through sworn affidavit Ex.PW1/A in consonance with his pleadings in statement of claim. He also tendered in evidence copy of letter dated 14-9-2007 Ex.PW1/B, copy of seniority list Ex.PW1/C, copy of mandays chart Ex.PW1/D, copy of office order dated 25-6-2021 Ex.PW1/E pertaining to regularization of one Piar Chand and copy of Award dated 8-10-2020 Ex. PW1/F passed by this Court in the case of Piar Chand. In the cross-examination, he admitted that Geeta Devi, Dalip Singh, Gautam Singh, Anil Kumar and Chanchal had joined HPPWD earlier to him. Further he self stated that Suresh Kumar, Vidya Devi, Kanta Devi, Manohar Lal, Mintu and Sukh Dev had joined later than him but have been regularized by the department in 2014. He admitted he is still working with respondent department. He also stated that he worked in his own fields and as labourer with others during his remaining out of work.

8. Per contra, Shri Sanjeev Kumar Sood, Executive Engineer, HPPWD B&R Division HPPWD Joginder Nagar appeared as RW1 and deposed the defence of respondent as contained in the reply, through his sworn affidavit Ex.RW1/A. He also referred in his affidavit to order dated 3-7-2013 aforementioned passed by this Court dismissing the claim petition for want of evidence, but same is of no consequence as said order has been set aside by Hon'ble High Court of H.P. *vide* order dated 10-8-2021 passed in CWP No. 2347 of 2020. RW1 tendered in evidence office order dated 2-1-2004 Ex.RW1/B regarding start of functioning of newly created B&R Division HPPWD Joginder Nagar from 2nd January, 2004, Notification dated 9-12-2003 Ex.RW1/C regarding creation of arbitration circle, rationalization of surplus staff in HPPWD, mandays chart of petitioner Ex.RW1/D, year-wise working days of 10 daily wages beldars Ex.RW1/E. In cross-examination, he admitted that no letter at the time of appointment of petitioner was issued to the effect that the services would consist of breaks. He also deposed no letter was issued to petitioner at

the time of appointment stipulating that his services would be subject to availability of work and funds. Further admitted that they had not issued any notice regarding alleged abandonment of work by the petitioner. He admitted that pursuant to Ex.PW1/B full months muster rolls were issued to the petitioner. He also admitted workers at serial No. 4, 5 to 11 in Ex.PW1/D were junior to petitioner, who were given work for full month and stand regularized.

9. Arguments of learned Authorized Representative/Counsel for the petitioner and learned Deputy District Attorney for the respondent were heard and record carefully perused.

10. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Relief : Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issue No.1:

11. Petitioner Shri Nanak Chand has categorically deposed through his affidavit Ex.PW1/A that services of petitioner have been engaged by the respondent on daily wage basis *w.e.f.* October, 1998 as beldar and he intermittently worked upto 31-8-2007. He further deposed that he could not complete 240 days in each calendar year due to reason that respondent gave him breaks from time to time from the date of his engagement to 31-8-2007 with the intention that he did not complete 240 days. His categoric stand is that respondent issued continuous muster rolls in favour of petitioner *w.e.f.* September, 2007 as per the direction issued by Principal Secretary (PW) *vide* letter dated 14th September, 2007 (Ex.PW1/B). His further deposition is that persons junior to petitioner namely Sanjeev Kumar, Gudi Devi, Prithi Pal, Rajinder Pal, Dalip Singh, Gautam Ram, Bhawani Ram and Ram Dhan have been continuously retained without any breaks as such there is violation of Section 25-G of the Act as all these workmen had completed more than 240 days from the date of their initial engagement.

12. In substratum, the petitioner has challenged the intermittent/artificial breaks given to him by the respondent. The respondent on the other hand has denied giving fictional breaks. Respondent asserted that petitioner was engaged as per the requirement of work and availability of funds. The mandays chart Ex.RW1/D tendered in evidence by RW1 Shri Sanjeev Kumar Sood, Executive Engineer HPPWD shows that petitioner worked for 35 days in year 1998, 172 days in 1999, 169 days in 2000, 169 days in 2001, 180 days in 2002, 161 days in 2003, 170 days in 2004, 170 days in 2005, 167.5 days in 2006, 232 days in 2007, 364 days in 2008, 365 days in 2009, 361 days in 2010, 365 days in 2011 and 91 days from 1-1-2012 to 31-3-2012. At the same time RW1 has admitted that pursuant to letter Ex.PW1/B full months muster rolls were issued to the petitioner. Letter Ex.PW1/B of the Principal Secretary (PW) issued to the Engineer-in-Chief as well other Chief Engineers and Superintending Engineers does mandate providing of muster roll for complete month to the workers without breaks instead of 15/18/20 or 30 days with intermittent breaks. Year-wise working days of daily wages workers Ex.PW1/D shows that workers figuring at serial No. 4 to 11 namely Sanjeev Kumar, Guddi Devi, Prithi Pal, Ravinder Kumar, Dalip Singh,

Gautam Ram, Bhawani Singh and Ram Dhan engaged in 1999 onwards upto 2003, have been provided working days more than 240 in calendar years 2003 to 2010. RW1 Shri Sanjeev Kumar Sood has categorically admitted that Sanjeev Kumar at serial No. 4 in Ex.PW1/D was given work for full month and was regularized. He also admitted that workers at serial Nos. 5 to 11 in Ex.PW1/D were junior to the petitioner, who were given work for full month stand regularized. He has also admitted that except worker at serial No. 7 in Ex.RW1/E all workers were junior to petitioner and given work for full months as well they stand regularized. In view of his categorical admission, it is evident that petitioner has not been provided work for more than 240 days in calendar years 1998 to 31-8-2007 whereas his juniors have completed more than 240 days in calendar years and stand regularized, which is discriminatory on part of the respondent and no cogent reason for such discrimination has been adduced on record. Thus, petitioner's fundamental rights engrained in Articles 14 and 16 viz. right to equality and equal opportunity in matters of public appointment stand violated. Besides, giving artificial breaks tantamounts to unfair labour practice under Section 2(ra) specified in Clause 10 of Schedule Fifth of the Act. It is also violative of provisions of Section 25-B of Act which stipulates that the workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account sickness or authorized leave or an accident or strike which is not illegal, or lock-out or a cessation of work which is not due to any fault on the part of the workman.

13. So far as plea of respondent that the petitioner was engaged subject to availability of work and funds is concerned, same is not tenable as similarly situate junior workers were given work for more than 240 days in calendar years whereas for no cogent reason petitioner has been discriminated against them. The engagement of junior workers and retaining them, at the same time, cessation of work/time to time disengagement/intermittent breaks given to the petitioner without proving abandonment of work on part of petitioner, does prove violation of Section 25-G of the Act and thus intermittent breaks are held illegal and unjustified.

14. As a consequence, it has to be presumed that petitioner was in continuous service in terms of Section 25-B of the Act. The breaks in service of petitioner given by the respondent being fictional in nature are held illegal, unjustified and shall have no effect on his seniority, continuity in service and seniority shall be reckoned from his date of initial engagement *i.e.* 5-10-1998. However, petitioner is not found entitled to back wages as he has admitted in cross-examination to have worked in his own fields and as labourer with others during his remaining out of work. Issue No.1 is decided in favour of petitioner and against respondent.

Issue No. 2 :

15. In view of positive findings on issue No. 1 above, the claim petition of petitioner is certainly maintainable. The respondent has failed to establish that the petition is not maintainable. Consequently, issue No. 2 is answered in the negative.

Issue No. 3 :

16. Coming to the plea of respondent that petition is hit by vice of delay and laches, it is observed that there is no inordinate delay while raising the demand by petitioner as the petitioner has specifically pleaded that he requested the respondent many time to stop giving him fictional breaks but the respondent did not pay heed. In response to such pleadings the respondent replied that present industrial dispute was at belated stage in 2010. The reference does mention about report No. 2223 dated 16-11-2011 of Labour Inspector-cum-Conciliation Officer. In such circumstances, it cannot be held that the petition is barred by delay and laches. Furthermore, Hon'ble Supreme Court in Ajaib Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited, (1999) 6 SCC 82, it has held as under:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. In view of the above position of law, it is held that petition does not suffer from the vice of delay and laches and issue no.3 is answered in negative.

Relief :

18. As a sequel to the findings of this Court on the issues above, the claim petition succeeds and is allowed in part. It is held that the breaks given by respondent to the petitioner from 5-10-1998 to 31-8-2007 were artificial/fictional in nature and consequently illegal and unjustified. This break period is ordered to be counted for the purpose of continuous service except back wages. Petitioner is held to be in continuous uninterrupted service with the respondent from 5.10.1998 to 31-8-2007. His seniority shall be reckoned from the date of his engagement *i.e.* 5-10-1998. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of January, 2021.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 80/2015
Date of Institution : 25-02-2015
Date of Decision : 14-01-2022

Sh. Biri Singh (deceased) s/o Sh. Janki Dass, r/o Village Matkehdu, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. through his legal representatives:

- (i) Smt. Reena Devi (widow)
- (ii) Ms.Preeti Devi (Daughter)
- (iii) Smt. Budhi Devi (mother)

All residents of Village Matkehdu, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioners.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.
. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, Ld. A.R.

For the Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

“Whether time to time termination of the services of Shri Biri Singh s/o Shri Janki Dass, r/o Village Matkehdu, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. during December, 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Shri Biri Singh workman expired on 16-12-2011 and *vide* order dated 30-11-2019 passed by this Court his legal heirs were allowed to be arrayed as petitioners in place of deceased petitioner Sh. Biri Singh. His legal heirs as mentioned in the memo of reference filed claim petition with the following averments. The services of deceased Late Sh. Biri Singh (hereinafter referred as 'workman' for the sake of convenience) were initially engaged by the department *w.e.f.* December, 1999 in B&R Sub Division No. II, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. on muster roll as daily waged basis. His services were engaged by the respondent for 15, 18, and 20 days instead of full months and breaks were given up to 31-08-2007 and thereafter the services of workman were continuously engaged without breaks as per instruction by the Principal Secretary (PW) to the Government of Himachal Pradesh *vide* letter dated 14-09-2007. It is further averred that respondent adopted pick and choose policy while giving fictional breaks to the workman so that he could not complete 240 days for the purpose of continuous service under Section 25-B of the Act. Other persons working alongwith workman, even persons junior to workman and new persons were engaged from time to time without fictional breaks which is stated to be violative of Section 25-G of the Act. It is further claimed that junior persons to the workman have been regularized before him. Claiming the breaks to be illegal and arbitrary, petitioner prayed for condoning the same and directions to the respondent for payment of wages of breaks period to the legal representatives. Further relief claimed is for regularization plus consequential benefits and difference of arrear along with interest. Also lump sum compensation amounting to Rs. 7,00,000/- is claimed by the legal representatives on account of leave encashment, arrears *w.e.f.* 01-01-2007 to 16-12-2011 (till the date of death of deceased workman).

3. Respondent contested the claim petition by filing reply raising preliminary submissions qua the claim petition being time barred, abatement, not maintainable and bad for non-joinder of necessary party *i.e.* National Highway H.P.P.W.D. Joginder Nagar. On merits, it is admitted that deceased Sh. Biri Singh was initially engaged as daily waged beldar during December, 1999. He is stated to have not worked with minimum 240 days in a calendar year up to 2007, however, from

year 1999 he has worked minimum 240 days or more in each calendar year. On the death of Sh. Biri Singh on 16-12-2011 his wife Smt. Reena Devi was appointed as class-IV on daily wage basis on compassionate ground and she joined her duty on 31-12-2014. It is denied that workman was not allowed to complete 240 days in each calendar year. It is further averred that the applicant was habitual to leave the job and was intermittent worker. Respondent denied violation of any provision of the Act and prayed for dismissal of the claim petition.

4. Petitioner filed rejoinder reiterating the contents of the claim petition and denying those of reply contrary to the claim petition.

5. On the pleadings of parties, following issues were framed on 14-07-2021:—

1. Whether time to time termination of services of the petitioner (now deceased) during December, 1999 to 31-08-2007 by the respondent is/was illegal and unjustified, as alleged? . . . *OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioners (LRs of deceased) are entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*
4. Whether the claim petition is time barred, as alleged? . . . *OPR.*
5. Whether the claim petition is bad for non-joinder of necessary parties, as alleged? . . . *OPR.*

Relief.

6. Evidence was led by the parties to the lis in support of their claims.

7. PW1 Smt. Reena Devi wd/o Late Shri Biri Singh appeared in the witness as PW1 and deposed the claim of deceased workman, through her sworn affidavit Ex. PW1/A in consonance with the claim petition. In cross-examination, she denied that the similarly situated workers were not regularized by the respondent. She denied that her claim is time barred.

8. On the other hand, respondent examined Sh. Sanjeev Kumar Sood, Executive Engineer, HPPWD B&R Division Joginder Nagar, Distt. Mandi, H.P. as RW1 who deposed the defence of respondent *vide* his sworn affidavit Ex. RW1/A as contained in the reply filed. He also tendered in evidence copy of yearwise working days of deceased petitioner Sh. Biri Singh Ex. RW1/B, yearwise working days of 6 daily wages beldar Ex. RW1/C and yearwise working days of 4 daily wages workers Ex. RW1/D. In cross-examination he admitted that junior workers to deceased Sh. Biri Singh were given work for full months and they stand regularized.

9. I have heard learned counsel for the petitioner and learned Deputy District Attorney for the respondent at length and considered the material on record.

10. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

- | | |
|-------------|---------------------|
| Issue No. 1 | : Yes. |
| Issue No. 2 | : As per discussion |
| Issue No. 3 | : No |

Issue No. 4	: No
Issue No. 5	: No
Relief.	: Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1 :

10. Shri Biri Singh workman has expired on 16-12-2011 and his widow Smt. Reena Devi deposed as PW1 through her sworn affidavit Ex. PW1/A that Late Sh. Biri Singh was engaged *w.e.f.* December, 1999 in B&R Sub Division No. II, H.P.P.W.D. Joginder Nagar and he interruptedly worked up to 31-08-2007 as fictional breaks were given to him. Thereafter, *w.e.f.* 01-09-2007 his services were continuously engaged without any breaks per direction issued by the Principal Secretary (PW) to the Govt. of H.P. *vide* letter dated 14-09-2007. She has categorically deposed that at the time of giving fictional breaks to the deceased worker the department retained junior persons in service which act is violative of Section 25-G and 25-H of the Act.

11. RW1 Sh. Sanjeev Kumar Sood, Executive Engineer, HPPWD B&R Division Joginder Nagar admitted that deceased Sh. Biri Singh was engaged as daily waged beldar during December, 1999. Though he denied giving fictional breaks but in cross-examination he has admitted that no letter at the time of appointment of deceased Sh. Biri Singh was issued to the effect that his services would consist of breaks. He further deposed as per record no letter was issued to deceased Biri Singh at the time of appointment stipulating that his services would be subject to availability of works and funds. He has also specifically admitted that workers at Sl. No. 1, 2, 5 and 6 in Ex. RW1/C were junior to deceased Biri Singh and were given work for full months and stand regularized as also that workers at Sl. No. 1 to 3 in Ex. RW1/D were junior to deceased Sh. Biri Singh and given work more than 300 days and they worked continuously and stand regularized. The aforementioned admissions of RW1 prove violation of Sections 25-G and 25-H as junior workers Sh. Pradeep Kumar, Kishori Lal, Nihal Chand and Chanchal figuring at Sl. No. 1, 2, 5 & 6 respectively in Ex. RW1/C were engaged after the deceased petitioner and were given work for full months and these persons completed more than 240 days in calendar years 2004 to 2008. Similarly junior workers Smt. Gita Devi, Dalip Singh and Gotam Singh figuring at Sl. No. 1 to 3 in Ex. RW1/D are shown to have worked more than 300 days from year 2003 onward and they stand regularized as admitted by RW1. Deceased workman Sh. Biri Singh certainly has been discriminated vis a vis juniors aforementioned as he was given work for only 3 days in year 1999, 80 days in year 2000, 174 days in year 2001, 166 days in year 2002, 172 days in year 2003, 167 days in year 2004, 168 days in years 2005, 162 days in year 2006, 227 days in year 2007 where after he is shown to have worked for 349 days in year 2008, as per yearwise working days detail Ex. RW1/C in respect of Sh. Biri Singh. Thus, irritational and discriminatory providing of fictional breaks to the deceased petitioner despite giving adequate work to the juniors is illegal and violation of fundamental rights of deceased petitioner and unfair labour practice in terms of Clause 10 of Fifth schedule of the Act as also principle of 'last come first go' envisaged under Section 25-G of the Act. It is well settled that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason, as held by Hon'ble Supreme Court in **Harjinder Singh v. Punjab State Warehousing Corporation, AIR 2010 SC 1116.**

12. It is also worthwhile to mention that Section 25-B of the Act enjoins a duty upon the respondent/employer to provide work atleast for 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. The employer can regulate the working of an employee as per his needs, but in view of spirit engrained in Section 25-B of the Act an employer is duty bound to provide the work for 240 days in a year to the employee/petitioner. Hon'ble Apex Court in **Employers in Relation To Digwadih Colliery v. Their Workmen, AIR 1966 SC 75**, has held that "service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted". The fiction of law converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. Thus, giving fictional breaks to the petitioner from December, 1999 to 31-08-2007 by the respondent are held to be illegal and unjustified. Consequently, issue No. 1 is answered in affirmative in favour of petitioners and against respondent.

Issue No. 2:

13. In view of positive finding on issue No. 1, the break period is to be counted for the purpose of continuous service in terms of Section 25(b) of the Act as also for seniority which shall be reckoned from the date of initial engagement of deceased petitioner Sh. Biri Singh. Petitioner has not pleaded that deceased workman was not gainfully employed during the period of fictional breaks nor deposed the same on oath, therefore deceased workman cannot be held entitled to back wages. However, deceased workman Sh. Biri Singh is held entitled to be deemed eligible for regularization by the respondent from the time his junior(s) has/have been regularized as per policy governing daily wagers framed by the State Government as operative from time to time. The petitioner shall be deemed to be in continuous service during the breaks period. Issue No. 2 is accordingly decided in favour of petitioner.

Issue No. 3:

14. In view of positive finding on issues No. 1&2, claim petition is held maintainable. Respondent even otherwise has not been able to prove/establish as to how the petition is not maintainable. Issue No. 3 is accordingly decided in negative against the respondent.

Issue No. 4:

15. Petitioners have specifically pleaded that in year 2009 workman has raised demand notice which fact has not been denied by the respondent. As the time to time termination of services are alleged illegal from December, 1999 to 31-08-2007, there is no inordinate delay in pursuing the claim by deceased workman. There is no limitation period prescribed in the Limitation Act, 1963 within which the reference is to be made. Law is well settled in this regard. Our Hon'ble High Court in **State of H.P.Anr. vs. Partap Singh, 2016(6) ILR HP 1314** relying upon the judgment of Hon'ble Apex Court in the case **Raghuvir v. G.M. Haryana Roadways Hissar, (2014) 10 SCC 301** has held as under:—

"...that there is no limitation for reference to

Court under Section 10 of the Act. It was held that words "At any time" mentioned in Section 10 of the Act clearly define Labour that law of limitation would not be applicable qua proceedings of reference under Section 10 of the Act.

"Section 10 of Industrial Disputes Act, 1947:—

Reference of dispute to Boards, Courts or Tribunals-(1) where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time by

order in writing, (a) Refer the dispute to a Board for promoting a settlement thereof, (b) Refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry”.

16. In Narain Singh vs. State of H.P. & Ors. 2016 Law Suit (HP) 1013 again Hon’ble High Court of Himachal Pradesh has turned down the plea of respondent department regarding delay and laches relying upon Raghuvir v. G.M. Haryana Roadways Hissar (Supra). The judgment Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota vs. Mohan Lal, 2013 (9) SCR 91 cited by learned Dy. District Attorney in support of his plea regarding delay and laches, is clearly distinguishable on facts and not applicable in the present case. It is no doubt true that delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. But, in the Assistant Engineer Rajasthan case (*supra*) the workman was work-charged employee who had worked in all for 286 days during his employment. His services were terminated *w.e.f.* 18-02-1986 and he raised the industrial dispute in 1992 *i.e.* after six years of termination, therefore, in such circumstances the judicial discretion exercised by the Labour Court was held to be flawed and unsustainable, by Hon’ble Apex Court, however, in lieu of reinstatement, compensation of Rs. 1 lakh was awarded. In the present case there is no inordinate delay in pursuing the claim by deceased workman as mentioned earlier and the deceased workman otherwise stood regularized on completion of requisite years of continuous service as per Government policy for year 2015 as pleaded by respondent. Therefore, issue No. 4 is also answered in negative against respondent.

Issue No. 5:

17. Respondent has not led any evidence to show that petition is bad for non-joinder of necessary parties. Necessary party is one in whose absence no relief/decreed can be passed by the Court. However, the necessary party in this case is respondent who is before the Court and against him the relief has been sought and awarded by this Court. Therefore, issue No. 5 is also answered in negative against the respondent.

Relief:

18. As a sequel to the findings of this Court on the issues framed, it is held that the time to time /artificial breaks in service given to Sh. Biri Singh deceased petitioner by the respondent from December, 1999 to 31-08-2007 are/were illegal and unjustified and deceased petitioner is held to be in continuous service with the respondent from the date of his initial engagement as well fictional breaks shall have no effect on the seniority and continuity of service and seniority of deceased petitioner shall be reckoned from the date of his initial engagement. The petitioner would be deemed in continuous service with consequential benefits **except back wages**. His service would be deemed to have been regularized from the date his junior(s) was/were regularized as per policy governing daily wages framed by the State Government and operative from time to time. Claim petition is hereby allowed in part and reference is answered accordingly in favour of the petitioners. The parties are left to bear their costs. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of January, 2022.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 195/2017

Date of Institution : 14-9-2017

Date of Decision : 21-01-2022

Shri Inder Singh s/o Shri Dhani Ram, r/o Village Owkal, P.O. Chowki, Sub Tehsil Nihri,
District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S. K. Arya, Ld. Advocate

For the Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

“Whether the alleged termination of services of Shri Inder Singh s/o Shri Dhani Ram, r/o Village Owkal, P.O. Chowki, Sub Tehsil Nihri, District Mandi, H.P. from time to time during year, 1996 and finally terminated during June, 2016 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?”

2. In nutshell, petitioner has averred in the claim petition to have been initially engaged as daily rated beldar *w.e.f.* 1-1-1996 with respondent and worked in Forest Range Jai Devi, Forest Division Sunder Nagar, District Mandi, H.P. He worked continuously *w.e.f.* 1-1-1996 upto December, 2001 and thereafter his services were orally terminated by respondent without issuing any notice or retrenchment compensation and inquiry. Against oral termination he raised the dispute before Labour and Conciliation Officer, Mandi who referred the matter under Section 12(4) of the Act to the appropriate Government. However, Labour Commissioner refused to make reference on the ground of delay *vide* order dated 31-3-2012. Petitioner challenged order dated 31-3-2012 before Hon'ble High Court of H.P. by way of CWP No. 6584 of 2012 and Hon'ble High Court was pleased to decide CWP 4294 of 2012 *vide* order dated 13-6-2012 and directed the respondents that in case petitioner has actually worked under the respondent, in case there is work available and respondent requires additional manpower, petitioner shall be engaged as fresh hand in preference to the fresh recruits. Petitioner immediately supplied copy of judgment passed in CWP No.6584/2012 to the respondent alongwith representation. Pursuant to aforesaid order respondent

re-engaged the petitioner *w.e.f.* 28-7-2012. Petitioner has claimed to have worked continuously without breaks since 28-7-2012 and completed 240 days in each calendar year upto 31-3-2016 and thereafter respondent orally and illegally terminated the services of petitioner *w.e.f.* 1-4-2016 without giving any notice, compensation or inquiry.

3. Petitioner has also pleaded that respondents are giving artificial/fictional breaks willfully in order to deprive petitioner the status of permanent workman/regularization as per the policy of State Government. Further that employer has changed the service condition of petitioner and is in habit of not issuing muster roll and taking the work on bill basis, which is stated unfair labour practice. On 31-3-2016 Range Officer, Forest Range Jai Devi asked the petitioner not to come on duty from that day onwards. Petitioner has claimed the retrenchment bad in law as provisions of Section 25-F of the Act have not been complied with. He also alleged violation of Sections 25-B, 25-G, 25-H and 25-T of the Act as also principle of 'last come first go'. He has claimed that respondent has illegally terminated the services of petitioner and retained junior workmen in the service who have been regularized. Juniors are stated to have been allowed to complete 240 days in each calendar year whereas petitioner has been discriminated. He has also alleged violation of Articles 14 and 21 of the Constitution and that respondent adopted the policy of 'hire and fire' and 'pick and choose'. Thus, he prayed for re-engagement in service with all consequential benefits, he be not given fictional breaks and granted seniority *w.e.f.* 1-1-1996 and consequential permanent status *i.e.* regularization as also direction to respondent not to change the service condition of petitioner.

4. Respondent contested the claim by filing reply raising preliminary submission that no legal and fundamental right of petitioner has been infringed by the respondent, as such the claim petition is not maintainable. On merits, it is submitted that petitioner was engaged as daily wage worker during August, 2003 on muster roll basis and thereafter petitioner left the work at his own sweet will. Petitioner worked intermittently on bill basis *w.e.f.* July, 2012 to June, 2018. Petitioner was never terminated and he worked intermittently and he left the work at his own sweet will. Petitioner never worked for 240 days continuously in a preceding calendar year. Respondent denied termination of petitioner on 1-4-2016 and claimed that petitioner left the work in August, 2003 at his own sweet will. Respondent pleaded no change in service condition of petitioner. Respondent denied that on 31-3-2016 the Range Officer, Forest Range Jai Devi asked the petitioner not to come on duty. As petitioner never completed 240 days in any calendar year and did not fulfill condition of continuous service under Section 25-B of the Act as such there is no need to serve notice under Section 25-F of the Act. Respondent also denied violation of Sections 25-G, 25-H of the Act, Articles 14 and 21 of Constitution as well adopting the policy of 'hire and fire' and 'pick and choose'. Thus respondent prayed for dismissal of claim petition.

5. Rejoinder was filed by the petitioner denying contents of the reply of respondent and reiterating contents of petition.

6. On the pleadings of parties, following issues were framed on 21-8-2019:—

1. Whether time to time termination of services of the petitioner during the year, 1996 and finally during June, 2016 by the respondent is/was illegal and unjustified, as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner examined PW1 Shri Surender Kumar who deposed of knowing petitioner and alleged him to be daily wage employee at Forest Range Jai Devi. He deposed that no termination notice and compensation was given by forest department and services of petitioner were retrenched wrongly and illegally. In cross-examination he deposed of working as Peon in Forest Department. Voluntarily stated that from daily wager he was regularized as Peon. He denied that petitioner was never disengaged from work by department and he voluntarily left the work.

8. Petitioner Sh. Inder Singh himself appeared as PW2 and deposed his claim through sworn affidavit Ex.PW2/A, as pleaded in the claim petition. He tendered in evidence copy of demand notice Ex.PW2/B, copy of letter from Raman Chand & others Ex.PW2/C, copy of judgment of Hon'ble High Court dated 13th June, 2012 Ex.PW2/D, copy of letter seeking seniority list Mark-A, copy of letter dated 10-2-2016 Mark-C, copy of Hon'ble High Court judgment dated August 21, 2012 Ex.PW2/E, copy of representation dated 19-6-2014 Mark-B, copy of letter dated 12-9-2012 of Principal Secretary Forests pertaining to CWP No. 4294/2012 Ex.PW2/F, copy of letter Ex.PW2/G regarding joining of petitioner, copy of letter dated 15-12-2012 of Divisional Forest Officer Ex.PW2/H regarding engaging of petitioners as fresh hand in connection with CWP No. 4294/2012, copy of tentative seniority list of daily labourers of Suket Forest Division as on 31-3-2014 Ex.PW2/J, reply of Divisional Forest Officer to the demand notice, Ex.PW2/K and copy of letter No. Fts 15-11/2005 (Audit) Ex. PW2/L. In cross-examination, he denied having been engaged by department in 2003 on muster rolls. He denied having worked from July, 2012 till June, 2018 on bill basis. Further denied never having completed 240 days in a year and that department never gave him intentional fictional breaks. Also denied having voluntarily left the work in 2003 and not returned. He deposed of having 3 bighas land.

9. Per contra, RW1 Shri Subhash Chand Prashar, Divisional Forest Officer, Suket Forest Division, Sunder Nagar deposed the defence of respondent, through his sworn affidavit Ex.RW1/A. He also tendered in evidence copy of mandays chart of petitioner Ex.RW1/B. In cross-examination, he denied that petitioner was engaged as daily wager in year 1996 and worked till 2001. He denied that petitioner was removed from service in year 2001. Self stated petitioner has worked for 30 days in August, 2003 and thereafter worked on bill basis. He admitted that Hon'ble High Court vide judgment Ex.PW2/E ordered engaging of petitioner. Self stated subject to conditions mentioned therein. He admitted petitioner was re-engaged on 28-7-2012. Self stated he was engaged on bill basis. He denied petitioner having worked more than 240 days in calendar years from 28-7-2012 to 31-3-2016 and respondent department arbitrarily changed service condition of petitioner from working on muster rolls to bill basis without authority. He also denied that artificial/fictional breaks were given in service to petitioner. He admitted Shri Surinder Kumar s/o Sh. Bhagmal at serial No. 62 in the seniority list Ex.PW2/J to be engaged in February, 2000. He claimed ignorance if Surinder Kumar stands regularized.

10. Learned Deputy District Attorney tendered in evidence copy of notification dated 28-4-2009 Ex. RX.

11. Arguments of learned counsel for the petitioner and learned Deputy District Attorney for the respondent were heard at length and record carefully perused. Learned counsel for petitioner argued that petitioner has continuously worked from *w.e.f.* 1-1-1996 till 31-3-2016, therefore, he is entitled for the benefits of regularization and his time to time termination of services and final termination *w.e.f.* 1-4-2016 is illegal. He also submitted that respondent has unilaterally changed the service condition of petitioner from working on muster roll to bill basis which is illegal without any notice or permission from the appropriate Government. Therefore, the fictional breaks and final termination be set aside.

12. On the other hand, learned Dy. District Attorney has submitted that petitioner has worked for 30 days on muster roll during August, 2003 and thereafter he left work at his own. He further submitted that petitioner has worked from July, 2012 to June, 2018 on bill basis as fresh hand in consonance with judgment Ex.PW2/E and thereafter petitioner had not turned up for work. Therefore, petitioner is not entitled to any of the reliefs claimed and respondent has not violated any provision of the Act.

13. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: Partly yes
Issue No. 2	: As per discussion
Issue No. 3	: No
Relief	: Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1 :

14. The case of petitioner is that he was engaged as daily rated beldar *w.e.f.* 1-1-1996 by respondent and he worked upto December, 2001, where after his services were orally terminated. Pursuant to the order of Hon'ble High Court of H.P. in CWP No. 6584 of 2012 he was re-engaged on 28-7-2012 and worked upto 31-3-2016 where after respondent orally and illegally terminated his service on 1-4-2016. Further, his claim is that respondent has willfully given artificial breaks to deprive him the status of permanent workman/regularization.

15. As against above case respondent has admitted that petitioner was engaged as daily waged worker during August, 2003 and worked for 30 days on muster rolls, thereafter he left the work at his own sweet will. Further, petitioner had worked intermittently on bill basis *w.e.f.* July, 2012 to June, 2018. It is denied that petitioner was terminated on 1-4-2016 or fictional breaks were given to him.

16. Mandays chart Ex.RW1/B tendered in evidence by the respondent, reveals that petitioner has worked for 30 days in 2003 on muster roll where after in 2012, 2013, 2014, 2016, 2017 and 2018 petitioner is shown to have been working on bill basis. It is admitted by respondent that petitioner was engaged as daily waged worker during August, 2003. The mandays chart Ex.RW1/B depicts petitioner to have been initially engaged on muster rolls. Why he was re-engaged on bill basis and worked from 2012 to 2018 on bills has not been satisfactorily explained by the respondent.

17. The defence plank of respondent is that petitioner was considered fresh hand pursuant to Hon'ble High Court judgment Ex.PW2/E and as he worked on bill basis, he cannot be said to be given fictional breaks. Respondent has claimed in his reply that as per Government Notification No.15-11/2005 (Audit) petitioner worked intermittently *w.e.f.* July, 2012 till June, 2018 as per availability of work and funds and as such there is no change in service condition of the petitioner. However, this defence plank/plea is erroneous and not sustainable in law. Admittedly, the petitioner was engaged as daily rated beldar, he worked on muster roll in year 2003 and thereafter on bill basis. How his service condition has been changed without issuance of any notice in terms of

Section 9A of the Act, has not been explained. Though, petitioner is claimed by respondent to have been working on bill basis from July, 2012 to June, 2018 how this change was incorporated in the service condition. Even considering that he was fresh hand in terms of Hon'ble High Court judgment Ex.PW2/E certainly there was/is no authorization for change in service condition of petitioner from working on muster roll to bill basis. Petitioner never consented to work on bill basis. Petitioner has never submitted any bill to the respondent then how he was paid against bills, has not been explained by the respondent.

18. Notification No. 15-11/2005 (Audit) has been exhibited by petitioner as Ex.PW2/L, but same only instructs the DDOs working under CFs, DFOs not to issue blank muster roll in future. Certainly, this notification cannot be taken as a defence to change the service condition of petitioner from muster roll to bill basis. The notification Ex. RX relied upon by learned Dy. District Attorney can in no manner authorize engagement of petitioner on bill basis. This notification has not even been pleaded by respondent in his reply and as such cannot be read in evidence per settled law that no amount of evidence can be looked in to in absence of its pleading. Even if *arguendo* it is considered, it carves out exception that where already continuing daily wagers are involved, who are working for last many years and cannot be removed, in such cases muster roll may be issued with the prior approval/authorization of DFO concerned.

19. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in **Workmen of Food Corporation of India vs. Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670** wherein the wages being paid on piece rate by the Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

“[19]It is at this stage necessary to examine the implication of Sec. 9A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent-Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item I in the Fourth Schedule provides: 'wages, Including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

20. Hon'ble Apex Court in **Workmen of Food Corporation of India vs. Food Corporation of India** *supra* has categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9A of I.D. Act, the same would amount to illegal change. Section 9A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service.

21. It has been held by the Hon'ble Apex Court in **Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Ltd. 2014 LawSuit (SC) 369, 2014 (11) SCC 85, 2014 AIR (SC) 2258**, as under:—

[23]. Very interestingly, the periods of service extends to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates 'unfair labour practice as defined under Section 2(ra) of the I.D. Act, which is not permissible in view of Sections 25T and 25U of the I.D. Act.

22. It is also important to take note of observations of Hon'ble Apex Court in **Secretary, Haryana State Electricity Board v/s Suresh 1999 LawSuit (SC) 380, 1999 AIR (SC) 1160**, to the following effect:—

“[17].....As a matter of fact law is well settled by this court and we need not dilate much by reason, therefore to the effect that the law courts exist for the society and in the event of there being a question posed in the matter of interpretation of a beneficial piece of legislation, question of interpreting the same with a narrow pedantic approach would not be justified. On the contrary, the widest possible meaning and amplitude ought to be offered to the expressions used as otherwise the entire legislation would loose its efficacy and contract labour would be left on the mercy of the intermediary.

[18]The democratic polity ought to survive with full vigour: socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises- is it permissible in the new millennium to decry the cry of the labour force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution-the answer cannot possibly be in the affirmative-the law courts exist for the society and in the event law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought rise up to the occasion to meet and redress the expectation of the people.....

23. The respondent without any agreement with the petitioner to work on bill basis, has obtained work from him on bill basis for six years. Against which, the petitioner filed representation dated 19-6-2014 Mark-B to the Secretary Forests, which has not been denied, to provide appropriate seniority to the petitioner and also for issuance of regular muster roll. However, respondent did not pay heed to the same and continued to obtain work from petitioner on bill basis. This is against the spirit of the Act and respondent cannot be permitted to employ petitioner on bill basis for years together denying him benefits payable to permanent/regular workman. These breaks in service amount to unfair labour practice under Section 2(ra) specified in Clause 10 of Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

“2(10) To employ workmen as “badlis”, casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen”.

24. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent being the State under Article 12 of Constitution has to behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a poor person as claimed by him. He cannot be deprived benevolent provisions of the Act as working on bill basis is nothing but refusal by the respondent to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. Our Hon'ble High Court in recent judgment **Keshav Ram vs. State of H.P. & Others 2020 LawSuit (HP) 215** has held the following:

“Beli Ram vs. State of H.P. and others decided on 02-06-2009, in which this Court has held as under:—

“The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State.

Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001.”

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15-06-2009, this Court has held as under:—

“It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219 ½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the

provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years."

25. It is also apposite to mention that the definition of continuous service in Section 25-B of the Act clearly specifies that workman shall be said to be in continuous service if he is for that period, in uninterrupted service, including service which may be interrupted on account of cessation of work which is not due to any fault on the part of the workman. Petitioner has claimed to be working throughout and respondent has alleged that he left the work of his own. It is observed that abandonment has not been proved by respondent. It is also not proved by respondent that Forest is a seasonal industry. The work is available throughout the year as other daily wage labourers are proved on record to be working as per seniority list Ex.PW2/J and the petitioner thus stands discriminated against the other workers in respect of whom seniority list was issued as on 31-3-2014. If there was no work available throughout the year how and why respondent issued tentative seniority list of daily labourers who are shown to have been engaged on different dates. Thus, pleas of abandonment, seasonal work and availability of work as well engaging petitioner on bill basis is camouflage, just to deprive petitioner of regular status of daily wager as well regularization benefit on completion of 240 days in calendar years and so the intermittent breaks are held artificial and fictional.

26. Thus, in view of the mandate of aforementioned law laid down by Hon'ble Apex Court and Hon'ble High Court the artificial breaks given in service during the period of alleged working on bill basis are held unjustified and illegal, liable to be set aside. RW1 has admitted that petitioner was re-engaged on 28-7-2012. In view of judgment of Hon'ble High Court of H.P. Ex.PW2/E petitioner has been engaged as fresh hand in preference to fresh recruits, as such he is entitled for service benefits only from the date of re-engagement *i.e.* 28-7-2012 and consequently in view of illegal artificial/fictional breaks given, he is entitled to be deemed in continuous service from 28-7-2012 till June, 2016 in terms of reference alongwith consequential benefit of seniority, except back wages.

27. Now coming to the question of final termination, it is observed that petitioner has claimed his final termination on 1-4-2016 which as per reference is June, 2016 but respondent has denied ever terminating the services of petitioner and specifically pleaded that petitioner worked intermittently on bill basis from July, 2012 till June, 2018. The plea of abandonment, as earlier observed, has not been proved by the respondent which as per the law is required to be proved like any other fact as held by Hon'ble High Court *ibid*. Further, the mandays chart Ex.RW1/B shows petitioner to have worked on bill basis till June, 2018. Thus, there is no final termination on 1-4-2016 or June, 2016 per reference and petitioner is deemed to have worked as daily wager continuously from 28-7-2012 to June, 2016 in terms of reference. Accordingly, Issue No. 1 decided in above terms.

Issue No. 2 :

28. As the fictional breaks given to petitioner from 28-7-2012 till June, 2016 are declared unjustified and illegal, petitioner is held entitled to consequential benefits of seniority from 28-7-2012, except back wages because petitioner has admittedly obtained wages/payments from respondent though on bill basis during said period. Issue No.2 is accordingly decided.

Issue No. 3 :

29. In view of positive findings on issues No. 1 and 2, the claim petition is held maintainable. Even otherwise, respondent has not proved or established the petition to be not maintainable. Accordingly, issued No. 3 is answered in negative against the respondent.

Relief :

30. As a sequel to the findings of this Court on the issues above, the claim petition succeeds in part and is partly allowed. The claim of petitioner with regards final termination of his services *w.e.f.* 1-4-2016/June, 2016 is dismissed. However, it is held that artificial/fictional breaks in service provided to the petitioner by respondent from 28-7-2012 till June, 2016 are unjustified and illegal. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged worker, except back wages. His seniority shall be reckoned from the date of his engagement as fresh hand with the respondent on 28-7-2012. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2022.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 194/2017
Date of Institution : 14-9-2017
Date of Decision : 21-1-2022

Shri Kanhaiya Lal s/o Shri Bhaju Ram, r/o Village Gashmala, P.O. Chowki, Sub Tehsil Nihri, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . *Respondent .*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Arya, Ld. Advocate
For the Respondent : Sh. Anil Sharma, Ld. Dy.D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

“Whether the alleged termination of services of Shri Kanhaiya Lal s/o Shri Bhaju Ram, r/o Village Gashmala, P.O. Chowki, Sub Tehsil Nihri, District Mandi, H.P. from time to time during year, 1994 and finally terminated during June, 2016 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?”

2. In nutshell, petitioner has averred in the claim petition to have been initially engaged as daily rated beldar *w.e.f.* 1-1-1996 with respondent and worked in Forest Range Jai Devi, Forest Division Sunder Nagar, District Mandi, H.P. He worked continuously *w.e.f.* 1-1-1996 uptil December, 2001 and thereafter his services were orally terminated by respondent without issuing any notice or retrenchment compensation and inquiry. Against oral termination he raised the dispute before Labour and Conciliation Officer, Mandi who referred the matter under Section 12(4) of the Act to the appropriate Government. However, Labour Commissioner refused to make reference on the ground of delay *vide* order dated 31-3-2012. Petitioner challenged order dated 31-3-2012 before Hon'ble High Court of H.P. by way of CWP 4294 of 2012 and Hon'ble High Court *vide* order dated 13-6-2012 directed the respondents that in case petitioner has actually worked under the respondent, in case there is work available and respondent requires additional manpower, petitioner shall be engaged as fresh hand in preference to the fresh recruits. Pursuant to aforesaid order respondent re-engaged the petitioner *w.e.f.* 28-7-2012. Petitioner has claimed to have worked continuously since 28-7-2012 without breaks and completed 240 days in each calendar year uptil 31-3-2016 and thereafter respondent orally and illegally terminated the services of petitioner *w.e.f.* 1-4-2016 without giving any notice, compensation or inquiry.

3. Petitioner has also pleaded that respondents are giving artificial/fictional breaks willfully in order to deprive petitioner the status of permanent workman/regularization as per the policy of State Government. Further that employer has changed the service condition of petitioner and is in habit of not issuing muster roll and taking the work on bill basis, which is stated unfair labour practice. On 31-3-2016 Range Officer, Forest Range Jai Devi asked the petitioner not to come on duty from that day onwards. Petitioner has claimed the retrenchment bad in law as provisions of Section 25-F of the Act have not been complied with. He also alleged violation of Sections 25-B, 25-G, 25-H and 25-T of the Act as also principle of 'last come first go'. He has claimed that respondent has illegally terminated the services of petitioner and retained junior workmen in the service who have been regularized. Juniors are stated to have been allowed to complete 240 days in each calendar year whereas petitioner has been discriminated. He has also alleged violation of Articles 14 and 21 of the Constitution and that respondent adopted the policy of 'hire and fire' and 'pick and choose'. Thus, he prayed for re-engagement in service with all consequential benefits, he be not given fictional breaks and granted seniority *w.e.f.* 1-1-1996 and consequential permanent status *i.e.* regularization as also direction to respondent not to change the service condition of petitioner.

4. Respondent contested the claim by filing reply raising preliminary submission that no legal and fundamental right of petitioner has been infringed by the respondent, as such the claim petition is not maintainable. On merits, it is submitted that petitioner was engaged as daily wage worker during December, 1998 on muster roll basis and thereafter petitioner left the work at his own sweet will. Petitioner worked intermittently on bill basis *w.e.f.* April, 2013 to June, 2018. Petitioner was never terminated and he worked intermittently and he left the work at his own sweet will. Petitioner never worked for 240 days continuously in a preceding calendar year. Respondent denied termination of petitioner on 1-4-2016 and claimed that earlier petitioner left the work in December, 1998 at his own sweet will. Respondent pleaded no change in service condition of petitioner. Respondent denied that on 31-3-2016 the Range Officer, Forest Range Jai Devi asked

the petitioner not to come on duty. As petitioner never completed 240 days in any calendar year and did not fulfill condition of continuous service under Section 25-B of the Act and as such there is no need to serve notice under Section 25-F of the Act. Respondent also denied violation of Sections 25-G, 25-H of the Act, Articles 14 and 21 of Constitution as well adopting the policy of 'hire and fire' and 'pick and choose'. Thus respondent prayed for dismissal of claim petition.

5. Rejoinder was filed by the petitioner denying contents of the reply of respondent and reiterating contents of petition.

6. On the pleadings of parties, following issues were framed on 21-8-2019:—

1. Whether time to time termination of services of the petitioner during the year, 1994 and finally during June, 2016 by the respondent is/was illegal and unjustified, as alleged? . . . *OPP*.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR*.

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner examined PW1 Shri Surender Kumar who deposed of knowing petitioner and alleged him to be daily wage employee at Forest Range Jai Devi. He deposed that no termination notice and compensation was given by forest department and services of petitioner were retrenched wrongly and illegally. In cross-examination he deposed of working as Peon in Forest Department. Voluntarily stated that from daily wager he was regularized as Peon. He denied that petitioner was never disengaged from work by department and he voluntarily left the work.

8. Petitioner Sh. Kanhaiya Lal himself appeared as PW2 and deposed his claim through sworn affidavit Ex.PW2/A, as pleaded in the claim petition. He tendered in evidence copy of bills for years 2012 to 2016 Ex.PW2/B to Ex.PW2/F, copy of mandays chart/Bill detail Ex.PW2/G, copy of demand notice Ex.PW2/H, copy of letter from Raman Chand & others Ex.PW2/J, copy of judgment of Hon'ble High Court dated 13th June, 2012 Ex.PW2/K, copy of letter seeking seniority list Mark-A, copy of letter dated 10-02-2016 Mark-C, copy of Hon'ble High Court judgment dated August 21, 2012 Ex.PW2/L, copy of representation dated 19-6-2014 Mark-B, copy of letter dated 12-9-2012 of Principal Secretary (Forests) pertaining to CWP No. 4294/ 2012 Ex.PW2/M, copy of letter Ex. PW2/N regarding joining of petitioner, copy of letter dated 15-12-2012 of Divisional Forest Officer Ex.PW2/O regarding engaging of petitioner as fresh hand in connection with CWP No. 4294/2012, copy of tentative seniority list of daily labourers of Suket Forest Division as on 31-3-2014 Ex.PW2/P, copy of reply of Divisional Forest Officer to the demand notice, Ex.PW2/Q and copy of letter No. Fts 15-11/2005 (Audit) Ex.PW2/R. In cross-examination, he denied having been engaged by department in December, 1998. Self stated it was in year 1996. Denied that from April, 2013 till June, 2018 he worked with the department on bill basis. Further denied never having completed 240 days in a year prior to demand notice. He deposed having 3½ bighas of land and maintained family members from work provided by the department. He admitted in 2017 and 2018 he was given intermittent work by the department but claimed ignorance whether said work was on bill basis. Further admitted that sometimes even now he is called for the work by the department and does the same. He claimed ignorance that date of termination in reference is June, 2016 whereas in claim petition mentioned as 01-04-2016. He denied that no alleged juniors have been engaged and regularized in service by the department.

9. Per contra, RW1 Shri Subhash Chand Prashar, Divisional Forest Officer, Suket Forest Division, Sunder Nagar deposed the defence of respondent, through his sworn affidavit Ex.RW1/A. In cross-examination, he denied that petitioner was engaged as daily wager in 1996 and worked till December, 2001. He denied that petitioner was removed from service in year 2001. Self stated petitioner has worked for 17 days in December, 1998 and thereafter worked on bill basis. He admitted that Hon'ble High Court *vide* judgment Ex.PW2/K ordered engaging of petitioner. Self stated subject to conditions mentioned therein. He admitted petitioner was re-engaged on 28-7-2012. Self stated he was engaged on bill basis. He denied petitioner having worked more than 240 days in calendar years from 28-7-2012 to 31-3-2016 and respondent department arbitrarily changed service condition of petitioner from working on muster rolls to bill basis without authority. He also denied that artificial/fictional breaks were given in service to petitioner. He admitted Shri Surinder Kumar s/o Sh. Bhagmal at serial No. 62 in the seniority list Ex.PW2/P to be engaged in February, 2000. He claimed ignorance if Surinder Kumar stands regularized.

10. Learned Deputy District Attorney tendered in evidence copy of notification dated 28-4-2009 Ex. RX.

11. Arguments of learned counsel for the petitioner and learned Deputy District Attorney for the respondent were heard at length and record carefully perused. Learned counsel for petitioner argued that petitioner has continuously worked from 1-1-1996 till 31-3-2016, therefore, he is entitled for the benefits of regularization and his time to time termination of services and final termination *w.e.f.* 01-4-2016 is illegal. He also submitted that respondent has unilaterally changed the service condition of petitioner from working on muster roll to bill basis which is illegal without any notice or permission from the appropriate Government. Therefore, the fictional breaks and final termination be set aside.

12. On the other hand, learned Dy. District Attorney has submitted that petitioner worked on muster rolls for only 17 days in December, 1998 and thereafter he left work at his own. He further submitted that petitioner has worked from April, 2013 to June, 2018 on bill basis as fresh hand in consonance with judgment Ex.PW2/K and thereafter petitioner had not turned up for work. Therefore, petitioner is not entitled to any of the reliefs claimed and respondent has not violated any provision of the Act.

13. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: Partly yes
Issue No. 2	: As per discussion
Issue No. 3	: No
Relief	: Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1 :

14. The case of petitioner is that he was engaged as daily rated beldar *w.e.f.* 1-1-1996 by respondent and he worked upto December, 2001, whereafter his services were orally terminated. Pursuant to the order of Hon'ble High Court of H.P. in CWP No. 4294 of 2012 he was re-engaged

on 28-7-2012 and worked upto 31-3-2016 whereafter respondent orally and illegally terminated his service on 01-4-2016. Further, his claim is that respondent has willfully given artificial breaks to deprive him the status of permanent workman/regularization.

15. As against above case respondent has pleaded that petitioner was engaged as daily waged worker during December, 1998 on muster roll basis and he worked intermittently on bill basis *w.e.f.* April, 2013 upto June, 2018, thereafter he left the work at his own sweet will. It is denied that petitioner was terminated on 1-4-2016 or fictional breaks were given to him.

16. Mandays chart Ex.PW2/G tendered in evidence by the petitioner and not disputed by the respondent, reveals that petitioner has worked for 17 days in 1998 on muster rolls whereafter in 2013, 2014, 2015, 2016, 2017 and 2018 petitioner is shown to have been working on bill basis. It is admitted by respondent that petitioner was engaged as daily waged worker during December, 1998. The mandays chart Ex.PW2/G depicts petitioner to have been initially engaged on muster rolls. Why he was re-engaged on bill basis and worked from 2012 to 2018 on bills has not been satisfactorily explained by the respondent.

17. The defence plank of respondent is that petitioner was considered fresh hand pursuant to Hon'ble High Court judgment Ex.PW2/K and as he worked on bill basis, he cannot be said to be given fictional breaks. Respondent has claimed in his reply that as per Government Notification No. 15-11/2005 (Audit) petitioner worked intermittently *w.e.f.* April, 2013 till June, 2018 as per availability of work and funds and as such there is no change in service condition of the petitioner. However, this defence plank/plea is erroneous and not sustainable in law. Admittedly, the petitioner was engaged as daily rated beldar, he worked on muster roll in December, 1998 and thereafter on bill basis. How his service condition has been changed without issuance of any notice in terms of Section 9A of the Act, has not been explained. Though, petitioner is claimed by respondent to have been working on bill basis from April, 2013 to June, 2018 how this change was incorporated in the service condition. Even considering that he was fresh hand in terms of Hon'ble High Court judgment Ex.PW2/K certainly there was/is no authorization for change in service condition of petitioner from working on muster roll to bill basis. Petitioner never consented to work on bill basis. Petitioner has never submitted any bill to the respondent then how he was paid against bills, has not been explained by the respondent.

18. Notification No.15-11/2005 (Audit) has been exhibited by petitioner as Ex.PW2/R but same only instructs the DDOs working under CFs, DFOs not to issue blank muster roll in future. Certainly, this notification cannot be taken as a defence to change the service condition of petitioner from muster roll to bill basis. The notification Ex. RX relied upon by learned Dy. District Attorney can in no manner authorize engagement of petitioner on bill basis. This notification has not even been pleaded by respondent in his reply and as such cannot be read in evidence per settled law that no amount of evidence can be looked in to in absence of its pleading. Even if *arguendo* it is considered, it carves out exception that where already continuing daily wagers are involved, who are working for last many years and cannot be removed, in such cases muster roll may be issued with the prior approval/authorization of DFO concerned.

19. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in **Workmen of Food Corporation of India vs. Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670** wherein the wages being paid on piece rate by the Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

“[19]It is at this stage necessary to examine the implication of Sec. 9 A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who

proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent-Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item I in the Fourth Schedule provides: 'wages, Including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

20. Hon'ble Apex Court in **Workmen of Food Corporation of India vs. Food Corporation of India** *supra* has categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9A of I.D. Act, the same would amount to illegal change. Section 9A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service.

21. It has been held by the Hon'ble Apex Court in **Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Ltd. 2014 LawSuit (SC) 369, 2014 (11) SCC 85, 2014 AIR (SC) 2258,** as under:—

[23]. Very interestingly, the periods of service extends to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates 'unfair labour practice as defined under Section 2(ra) of the I.D. Act, which is not permissible in view of Sections 25T and 25U of the I.D. Act.

22. It is also important to take note of observations of Hon'ble Apex Court in **Secretary, Haryana State Electricity Board v/s Suresh 1999 LawSuit (SC) 380, 1999 AIR (SC) 1160,** to the following effect:—

“[17].....As a matter of fact law is well settled by this court and we need not dilate much by reason, therefore to the effect that the law courts exist for the society and in the event of there being a question posed in the matter of interpretation of a beneficial piece of legislation, question of interpreting the same with a narrow pedantic approach would not be justified. On the contrary, the widest possible meaning and amplitude ought to be offered to

the expressions used as otherwise the entire legislation would lose its efficacy and contract labour would be left on the mercy of the intermediary.

[18]The democratic polity ought to survive with full vigour: socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises-is it permissible in the new millennium to deny the cry of the labour force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution-the answer cannot possibly be in the affirmative-the law courts exist for the society and in the event law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought rise up to the occasion to meet and redress the expectation of the people.....”

23. The respondent without any agreement with the petitioner to work on bill basis, has obtained work from him on bill basis for five years. Against which, the petitioner filed representation dated 19-6-2014 Mark-B to the Secretary Forests, which has not been denied, to provide appropriate seniority to the petitioner and also for issuance of regular muster roll. However, respondent did not pay heed to the same and continued to obtain work from petitioner on bill basis. This is against the spirit of the Act and respondent cannot be permitted to employ petitioner on bill basis for years together denying him benefits payable to permanent/regular workman. These breaks in service amount to unfair labour practice under Section 2(ra) specified in Clause 10 of Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

“2(10) To employ workmen as “badlis”, casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen”.

24. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent being the State under Article 12 of Constitution has to behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a poor person as claimed by him. He cannot be deprived benevolent provisions of the Act as working on bill basis is nothing but refusal by the respondent to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. Our Hon’ble High Court in recent judgment **Keshav Ram vs. State of H.P. & Others 2020 LawSuit (HP) 215** has held the following:

“Beli Ram vs. State of H.P. and others decided on 02-06-2009, in which this Court has held as under:—

“The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to

complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State. Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001."

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15-06-2009, this Court has held as under:—

"It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219 ½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years."

25. It is also apposite to mention that the definition of continuous service in Section 25-B of the Act clearly specifies that workman shall be said to be in continuous service if he is for that period, in uninterrupted service, including service which may be interrupted on account of cessation of work which is not due to any fault on the part of the workman. Petitioner has claimed to be working throughout and respondent has alleged that he left the work of his own. It is observed that abandonment has not been proved by respondent. It is also not proved by respondent that Forest is a seasonal industry. The work is available throughout the year as other daily wage labourers are proved on record to be working as per seniority list Ex.PW2/P and the petitioner thus stands discriminated against the other workers in respect of whom seniority list was issued as on 31-3-2014. If there was no work available throughout the year how and why respondent issued tentative seniority list of daily labourers who are shown to have been engaged on different dates. Thus, pleas of abandonment, seasonal work and availability of work as well engaging petitioner on bill basis is camouflage, just to deprive petitioner of regular status of daily wager as well regularization benefit on completion of 240 days in calendar years and so the intermittent breaks are held artificial and fictional.

26. Thus, in view of the mandate of aforementioned law laid down by Hon'ble Apex Court and Hon'ble High Court the artificial breaks given in service during the period of alleged working on bill basis are held unjustified and illegal, liable to be set aside. RW1 has admitted that petitioner was re-engaged on 28-7-2012. Bill Ex.PW2/B also shows payment made to petitioner for the month of August, 2012. In view of judgment of Hon'ble High Court of H.P. Ex.PW2/K petitioner has been engaged as fresh hand in preference to fresh recruits, as such he is entitled for service benefits only from the date of re-engagement *i.e.* 28-7-2012 and consequently in view of illegal artificial/fictional breaks given, he is entitled to be deemed in continuous service from 28-7-2012 till June, 2016 in terms of reference along with consequential benefit of seniority, except back wages.

27. Now coming to the question of final termination, it is observed that petitioner has claimed his final termination on 1-4-2016 which as per reference is June, 2016 but respondent has denied ever terminating the services of petitioner and specifically pleaded that petitioner worked intermittently on bill basis from April, 2013 till June, 2018. The plea of abandonment, as earlier observed has not been proved by the respondent which as per the law is required to be proved like any other fact as held by Hon'ble High Court *ibid*. Further, the mandays chart Ex,PW2/G shows petitioner to have worked on bill basis till June, 2018. Thus, there is no final termination on 1-4-2016 or June, 2016 per reference and petitioner is deemed to have worked as daily wager continuously from 28-7-2012 to June, 2016 in terms of reference. Accordingly, Issue no.1 decided in above terms.

Issue No.2 :

28. As the fictional breaks given to petitioner from 28-7-2012 till June, 2016 are declared unjustified and illegal, petitioner is held entitled to consequential benefits of seniority from 28-7-2012, except back wages because petitioner has admittedly obtained wages/payments from respondent though on bill basis during said period. Issue No. 2 is accordingly decided.

Issue No. 3 :

29. In view of positive findings on issues No. 1 and 2, the claim petition is held maintainable. Even otherwise, respondent has not proved or established the petition to be not maintainable. Accordingly, issued No. 3 is answered in negative against the respondent.

Relief :

30. As a sequel to the findings of this Court on the issues above, the claim petition succeeds in part and is partly allowed. The claim of petitioner with regards final termination of his services *w.e.f.* 1-4-2016/June, 2016 is dismissed. However, it is held that artificial/fictional breaks in service provided to the petitioner by respondent from 28-7-2012 till June, 2016 are unjustified and illegal. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged worker, except back wages. His seniority shall be reckoned from the date of his engagement as fresh hand with the respondent on 28-7-2012. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2022.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 193/2017

Date of Institution : 14-9-2017

Date of Decision : 21-01-2022

Shri Guna Nand s/o Shri Hukam Chand, r/o Village Kalaon, P.O. Paura Kothi, Sub Tehsil Nihri, District Mandi, H.P.

. .Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.

. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Arya, Ld. Advocate

For the Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

“Whether the alleged termination of services of Shri Guna Nand s/o Shri Hukam Chand, r/o Village Kalaon, P.O. Paura Kothi, Sub Tehsil Nihri, District Mandi, H.P. from time to time during year, 1994 and finally terminated during June, 2016 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?”

2. In nutshell, petitioner has averred in the claim petition to have been initially engaged as daily rated beldar *w.e.f.* 1-11-1994 with respondent and worked in Forest Range Jai Devi, Forest Division Sunder Nagar, District Mandi, H.P. He worked continuously *w.e.f.* 1-11-1994 upto December, 2007 and thereafter his services were orally terminated by respondent without issuing any notice or retrenchment compensation and inquiry. Against oral termination he raised the dispute before Labour and Conciliation Officer, Mandi who referred the matter under Section 12(4) of the Act to the appropriate Government. However, Labour Commissioner refused to make reference on the ground of delay *vide* order dated 31-3-2012. Petitioner challenged order dated 31-3-2012 before Hon'ble High Court of H.P. by way of CWP 4294 of 2012 and Hon'ble High Court *vide* order dated 13-6-2012 directed the respondents that in case petitioner has actually worked under the respondent, in case there is work available and respondent requires additional manpower, petitioner shall be engaged as fresh hand in preference to the fresh recruits. Pursuant to aforesaid order respondent re-engaged the petitioner *w.e.f.* 28-7-2012. Petitioner has claimed to have worked continuously without breaks and completed 240 days in each calendar year upto 31-3-2016 and thereafter respondent orally and illegally terminated the services of petitioner *w.e.f.* 1-4-2016 without giving any notice, compensation or inquiry.

3. Petitioner has also pleaded that respondents are giving artificial/fictional breaks willfully in order to deprive petitioner the status of permanent workman/regularization as per the policy of State Government. Further that employer has changed the service condition of petitioner and is in habit of not issuing muster roll and taking the work on bill basis, which is stated unfair

labour practice. On 31-3-2016 Range Officer, Forest Range Jai Devi asked the petitioner not to come on duty from that day onwards. Petitioner has claimed the retrenchment bad in law as provisions of Section 25-F of the Act have not been complied with. He also alleged violation of Sections 25-B, 25-G, 25-H and 25-T of the Act as also principle of 'last come first go'. He has claimed that respondent has illegally terminated the services of petitioner and retained junior workmen in the service who have been regularized. Juniors are stated to have been allowed to complete 240 days in each calendar year whereas petitioner has been discriminated. He has also alleged violation of Articles 14 and 21 of the Constitution and that respondent adopted the policy of 'hire and fire' and 'pick and chose'. Thus, he prayed for re-engagement in service with all consequential benefits, he be not given fictional breaks and granted seniority *w.e.f.* 1-1-1994 and consequential permanent status *i.e.* regularization as also direction to respondent not to change the service condition of petitioner.

4. Respondent contested the claim by filing reply raising preliminary submission that no legal and fundamental right of petitioner has been infringed by the respondent, as such the claim petition is not maintainable. On merits, it is submitted that petitioner was engaged as daily wage worker during November, 1994 and worked intermittently till May, 2004 on muster roll basis and thereafter petitioner left the work at his own sweet will. Petitioner worked intermittently on bill basis *w.e.f.* May, 2007 to May, 2018. Petitioner was never terminated and he worked intermittently and he left the work at his own sweet will. Petitioner never worked for 240 days continuously in a preceding calendar year. Respondent denied termination of petitioner on 1-4-2016 and claimed that earlier petitioner left the work in May, 2004 at his own sweet will. Respondent pleaded no change in service condition of petitioner. Respondent denied that on 31-3-2016 the Range Officer, Forest Range Jai Devi asked the petitioner not to come on duty. As petitioner never completed 240 days in any calendar year and did not fulfill condition of continuous service under Section 25-B of the Act as such there is no need to serve notice under Section 25-F of the Act. Respondent also denied violation of Sections 25-G, 25-H of the Act, Articles 14 and 21 of Constitution as well adopting the policy of 'hire and fire' and 'pick and choose'. Thus respondent prayed for dismissal of claim petition.

5. Rejoinder was filed by the petitioner denying contents of the reply of respondent and reiterating contents of petition.

6. On the pleadings of parties, following issues were framed on 21-8-2019:—

1. Whether time to time termination of services of the petitioner during the year, 1994 and finally during June, 2016 by the respondent is/was illegal and unjustified, as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner examined PW1 Shri Surender Kumar who deposed of knowing petitioner and alleged him to be daily wage employee at Forest Range Jai Devi. He deposed that no termination notice and compensation was given by forest department and services of petitioner were retrenched wrongly and illegally. In cross-examination he deposed of working as Peon in Forest Department. Voluntarily stated that from daily wage he was regularized as Peon. He denied that petitioner was never disengaged from work by department and he voluntarily left the work.

8. Petitioner Sh. Guna Nand himself appeared as PW2 and deposed his claim through sworn affidavit Ex.PW2/A, as pleaded in the claim petition. He tendered in evidence copy of bills for years 2012 to 2016 Ex.PW2/B to Ex.PW2/E, copy of mandays chart/Bill detail Ex.PW2/F, copy of demand notice Ex.PW2/G, copy of letter from Raman Chand & others Ex.PW2/H, copy of judgment of Hon'ble High Court dated 13th June, 2012 Ex.PW2/J, copy of letter seeking seniority list Mark-A, copy of letter Mark-C, copy of Hon'ble High Court judgment dated August 21, 2012 Ex.PW2/K, copy of representation dated 19-6-2014 Mark-B, copy of letter dated 12-9-2012 of Principal Secretary pertaining to CWP No. 4294/2012 Ex.PW2/L, copy of letter Ex.PW2/M regarding joining of petitioner, copy of letter dated 15-12-2012 of Divisional Forest Officer Ex.PW2/N regarding engaging of petitioner as fresh hand in connection with CWP No. 4294/2012, copy of tentative seniority list of daily labourers of Suket Forest Division as on 31-3-2014 Ex.PW2/O, reply of Divisional Forest Officer to the demand notice, Ex.PW2/P and copy of letter No.Fts 15-11/2005 (Audit) Ex.PW2/Q. In cross-examination, he denied having been given job by department in 1994. Also denied that between November, 1994 to 2004 he off and on came to work. Further denied never having completed 240 days in a year and that department never gave him intentional fictional breaks. Claimed ignorance if between May, 2007 to May, 2018 he worked on bill basis. Self stated he regularly worked for the department. He deposed of having 3 bighas land and maintaining four dependant family members.

9. Per contra, RW1 Shri Subhash Chand Prashar, Divisional Forest Officer, Suket Forest Division, Sunder Nagar deposed the defence of respondent, through his sworn affidavit Ex.RW1/A. In cross-examination, he denied that petitioner was engaged as daily wager on 1-11-1994 and worked till December, 2007. He denied that petitioner was removed from service in year 2007. Self stated petitioner was engaged on November, 1994 and he continued to work on muster roll basis till May, 2004 as per Ex.PW2/F and thereafter worked on bill basis. He admitted that Hon'ble High Court *vide* judgment Ex.PW2/J ordered engaging of petitioner. Self stated subject to conditions mentioned therein. He admitted petitioner was re-engaged on 28-7-2012. Self stated he was engaged on bill basis. He denied petitioner having worked more than 240 days in calendar years from 28-7-2012 to 31-3-2016 and respondent department arbitrarily changed service condition of petitioner from working on muster rolls to bill basis without authority. He also denied that artificial/fictional breaks were given in service to petitioner. He admitted Shri Surender Kumar s/o Sh. Bhagmal at serial No. 62 in the seniority list Ex.PW2/O to be engaged in February, 2000. He claimed ignorance if Surender Kumar stands regularized.

10. Learned Deputy District Attorney tendered in evidence copy of notification dated 28-4-2009 Ex.RX.

11. Arguments of learned counsel for the petitioner and learned Deputy District Attorney for the respondent were heard at length and record carefully perused. Learned counsel for petitioner argued that petitioner has continuously worked from 1-1-1994 till 31-3-2016, therefore, he is entitled for the benefits of regularization and his time to time termination of services and final termination *w.e.f.* 1-4-2016 is illegal. He also submitted that respondent has unilaterally changed the service condition of petitioner from working on muster roll to bill basis which is illegal without any notice or permission from the appropriate Government. Therefore, the fictional breaks and final termination be set aside.

12. On the other hand, learned Dy. District Attorney has submitted that petitioner worked intermittently on muster rolls from November, 1994 till May, 2004 and thereafter he left work at his own. He further submitted that petitioner has worked from May, 2007 to May, 2018 on bill basis as fresh hand in consonance with judgment Ex.PW2/J and thereafter petitioner had not turned up for work. Therefore, petitioner is not entitled to any of the reliefs claimed and respondent has not violated any provision of the Act.

13. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: Partly yes
Issue No. 2	: As per discussion
Issue No. 3	: No
Relief	: Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1:

14. The case of petitioner is that he was engaged as daily rated beldar *w.e.f.* 1-11-1994 by respondent and he worked upto December, 2007, where after his services were orally terminated. Pursuant to the order of Hon'ble High Court of H.P. in CWP No. 4294 of 2012 he was re-engaged on 28-7-2012 and worked upto 31-3-2016 where after respondent orally and illegally terminated his service on 1-4-2016. Further, his claim is that respondent has willfully given artificial breaks to deprive him the status of permanent workman/regularization.

15. As against above case respondent has admitted that petitioner was engaged as daily waged worker during November, 1994 and he worked intermittently upto May, 2004, thereafter he left the work at his own sweet will. Further, petitioner had worked intermittently on bill basis *w.e.f.* May, 2007 to May, 2018. It is denied that petitioner was terminated on 1.4.2016 or fictional breaks were given to him.

16. Mandays chart Ex.PW2/F tendered in evidence by petitioner and not disputed by the respondent, reveals that petitioner has worked for 46 days in 1994, 23 days in 1995, 23 days in 1996, 52 days in 1997, 118 days in 1998, 12 days in 1999, 118 days in 2000, 7 days in 2003 and 46 days in 2004 on muster rolls whereafter in 2007, 2013, 2014, 2016, 2017 and 2018 petitioner is shown to have been working on bill basis. It is admitted by respondent that petitioner was engaged as daily waged worker during November, 1994. The mandays chart Ex.PW2/F depicts petitioner to have been initially engaged on muster rolls. Why he was re-engaged on bill basis and worked from 2012 to 2018 on bills has not been satisfactorily explained by the respondent.

17. The defence plank of respondent is that petitioner was considered fresh hand pursuant to Hon'ble High Court judgment Ex.PW2/J and as he worked on bill basis, he cannot be said to be given fictional breaks. Respondent has claimed in his reply that as per Government Notification No.15-11/2005 (Audit) petitioner worked intermittently *w.e.f.* May, 2007 till May, 2018 as per availability of work and funds and as such there is no change in service condition of the petitioner. However, this defence plank/plea is erroneous and not sustainable in law. Admittedly, the petitioner was engaged as daily rated beldar, he worked on muster roll from 1994 till 2004 and thereafter on bill basis. How his service condition has been changed without issuance of any notice in terms of Section 9A of the Act, has not been explained. Though, petitioner is claimed by respondent to have been working on bill basis from May, 2007 to May, 2018 how this change was incorporated in the service condition. Even considering that he was fresh hand in terms of Hon'ble High Court judgment Ex.PW2/J certainly there was/is no authorization for change in service condition of petitioner from working on muster roll to bill basis. Petitioner never consented to work on bill basis. Petitioner has never submitted any bill to the respondent then how he was paid against bills, has not been explained by the respondent.

18. Notification No.15-11/2005 (Audit) has been exhibited by petitioner as Ex.PW2/Q but same only instructs the DDOs working under CFs, DFOs not to issue blank muster roll in future. Certainly, this notification cannot be taken as a defence to change the service condition of petitioner from muster roll to bill basis. The notification Ex. RX relied upon by learned Dy. District Attorney can in no manner authorize engagement of petitioner on bill basis. This notification has not even been pleaded by respondent in his reply and as such cannot be read in evidence per settled law that no amount of evidence can be looked in to in absence of its pleading. Even if *arguendo* it is considered, it carves out exception that where already continuing daily wagers are involved, who are working for last many years and cannot be removed, in such cases muster roll may be issued with the prior approval/authorization of DFO concerned.

19. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in **Workmen of Food Corporation of India vs. Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670** wherein the wages being paid on piece rate by the Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

“[19]It is at this stage necessary to examine the implication of Sec. 9A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent- Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item I in the Fourth Schedule provides: 'wages, Including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

20. Hon'ble Apex Court in **Workmen of Food Corporation of India vs. Food Corporation of India** *supra* has categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9A of I.D. Act, the same would amount to illegal change. Section 9A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service.

21. It has been held by the Hon'ble Apex Court in **Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Ltd. 2014 LawSuit (SC) 369, 2014 (11) SCC 85, 2014 AIR (SC) 2258,** as under:—

[23]. Very interestingly, the periods of service extends to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates 'unfair labour practice as defined under Section 2(ra) of the I.D. Act, which is not permissible in view of Sections 25T and 25U of the I.D. Act.

22. It is also important to take note of observations of Hon'ble Apex Court in **Secretary, Haryana State Electricity Board v/s Suresh 1999 LawSuit (SC) 380, 1999 AIR (SC) 1160,** to the following effect:—

“[17].....As a matter of fact law is well settled by this court and we need not dilate much by reason, therefore to the effect that the law courts exist for the society and in the event of there being a question posed in the matter of interpretation of a beneficial piece of legislation, question of interpreting the same with a narrow pedantic approach would not be justified. On the contrary, the widest possible meaning and amplitude ought to be offered to the expressions used as otherwise the entire legislation would loose its efficacy and contract labour would be left on the mercy of the intermediary.

[18]The democratic polity ought to survive with full vigour: socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises-is it permissible in the new millennium to decry the cry of the labour force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution-the answer cannot possibly be in the affirmative-the law courts exist for the society and in the event law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought rise up to the occasion to meet and redress the expectation of the people.....

23. The respondent without any agreement with the petitioner to work on bill basis, has obtained work from him on bill basis for five years. Against which, the petitioner filed representation dated 19-6-2014 Mark-B to the Secretary Forests which has not been denied, to provide appropriate seniority to the petitioner and also for issuance of regular muster roll. However, respondent did not pay heed to the same and continued to obtain work from petitioner on bill basis. This is against the spirit of the Act and respondent cannot be permitted to employ petitioner on bill basis for years together denying him benefits payable to permanent/regular workman. These breaks in service amount to unfair labour practice under Section 2(ra) specified in Clause 10 of Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

“2(10) To employ workmen as “badlis”, casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen”.

24. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent being the State under Article 12 of Constitution has to behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a poor person as claimed by him. He cannot be deprived benevolent provisions of the Act as working on bill basis is nothing but refusal

by the respondent to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. Our Hon'ble High Court in recent judgment **Keshav Ram vs. State of H.P. & Others 2020 LawSuit (HP) 215** has held the following:

“Beli Ram vs. State of H.P. and others decided on 02-06-2009, in which this Court has held as under:—

“The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/ nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State.

Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001.”

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15-06-2009, this Court has held as under:—

“It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219 ½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years.”

25. It is also apposite to mention that the definition of continuous service in Section 25-B of the Act clearly specifies that workman shall be said to be in continuous service if he is for that

period, in uninterrupted service, including service which may be interrupted on account of cessation of work which is not due to any fault on the part of the workman. Petitioner has claimed to be working throughout and respondent has alleged that he left the work of his own. It is observed that abandonment has not been proved by respondent. It is also not proved by respondent that Forest is a seasonal industry. The work is available throughout the year as other daily wage labourers are proved on record to be working as per seniority list Ex.PW2/O and the petitioner thus stands discriminated against the other workers in respect of whom seniority list was issued as on 31-3-2014. If there was no work available throughout the year how and why respondent issued tentative seniority list of daily labourers who are shown to have been engaged on different dates. Thus, pleas of abandonment, seasonal work and availability of work as well engaging petitioner on bill basis is camouflage, just to deprive petitioner of regular status of daily wager as well regularization benefit on completion of 240 days in calendar years and so the intermittent breaks are held artificial and fictional.

26. Thus, in view of the mandate of aforementioned law laid down by Hon'ble Apex Court and Hon'ble High Court the artificial breaks given in service during the period of alleged working on bill basis are held unjustified and illegal, liable to be set aside. RW1 has admitted that petitioner was re-engaged on 28-7-2012. Bill Ex. PW2/B also shows payment made to petitioner for the month of August, 2012. In view of judgment of Hon'ble High Court of H.P. Ex.PW2/J petitioner has been engaged as fresh hand in preference to fresh recruits, as such he is entitled for service benefits only from the date of re-engagement *i.e.* 28-7-2012 and consequently in view of illegal artificial/fictional breaks given, he is entitled to be deemed in continuous service from 28-7-2012 till June, 2016 in terms of reference alongwith consequential benefit of seniority, except back wages.

27. Now coming to the question of final termination, it is observed that petitioner has claimed his final termination on 1-4-2016 which as per reference is June, 2016 but respondent has denied ever terminating the services of petitioner and specifically pleaded that petitioner worked intermittently on bill basis from May, 2007 till May, 2018. The plea of abandonment, as earlier observed, has not been proved by the respondent which as per the law is required to be proved like any other fact as held by Hon'ble High Court *ibid*. Further, the mandays chart Ex,PW2/F shows petitioner to have worked on bill basis till May, 2018. Thus, there is no final termination on 1-4-2016 or June, 2016 per reference and petitioner is deemed to have worked as daily wager continuously from 28-7-2012 to June, 2016 in terms of reference. Accordingly, Issue No. 1 decided in above terms.

Issue No. 2 :

28. As the fictional breaks given to petitioner from 28-7-2012 till June, 2016 are declared unjustified and illegal, petitioner is held entitled to consequential benefits of seniority from 28-7-2012, except back wages because petitioner has admittedly obtained wages/payments from respondent though on bill basis during said period. Issue no.2 is accordingly decided.

Issue No. 3 :

29. In view of positive findings on issues No. 1 and 2, the claim petition is held maintainable. Even otherwise, respondent has not proved or established the petition to be not maintainable. Accordingly, issued no.3 is answered in negative against the respondent.

Relief :

30. As a sequel to the findings of this Court on the issues above, the claim petition succeeds in part and is partly allowed. The claim of petitioner with regards final termination of his

services *w.e.f.* 1-4-2016/June, 2016 is dismissed. However, it is held that artificial/fictional breaks in service provided to the petitioner by respondent from 28-7-2012 till June, 2016 are unjustified and illegal. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged worker, except back wages. His seniority shall be reckoned from the date of his engagement as fresh hand with the respondent on 28-7-2012. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2022.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 196/2017

Date of Institution : 14-9-2017

Date of Decision : 21-1-2022

Shri Raman Chand s/o Shri Mirza Ram, r/o Village Chichar, P.O. Rohanda, Sub Tehsil Nihri, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S. K. Arya, Ld. Advocate

For the Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

“Whether the alleged termination of services of Shri Raman Chand s/o Shri Mirza Ram, r/o Village Chichar, P.O. Rohanda, Sub-Tehsil Nihri, District Mandi, H.P. from time to time during year, 1994 and finally terminated during June, 2016 by the Divisional Forest Officer,

Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?"

2. In nutshell, petitioner has averred in the claim petition to have been initially engaged as daily rated beldar *w.e.f.* 1-1-1994 with respondent and worked in Forest Range Jai Devi, Forest Division Sunder Nagar, District Mandi, H.P. He worked continuously *w.e.f.* 1-1-1994 upto November, 2004 and thereafter his services were orally terminated by respondent without issuing any notice or retrenchment compensation and inquiry. Against oral termination he raised the dispute before Labour and Conciliation Officer, Mandi who referred the matter under Section 12(4) of the Act to the appropriate Government. However, Labour Commissioner refused to make reference on the ground of delay *vide* order dated 31-3-2012. Petitioner challenged order dated 31-3-2012 before Hon'ble High Court of H.P. by way of CWP 4294 of 2012 and Hon'ble High Court *vide* order dated 13-6-2012 directed the respondents that in case petitioner has actually worked under the respondent, in case there is work available and respondent requires additional manpower, petitioner shall be engaged as fresh hand in preference to the fresh recruits. Pursuant to aforesaid order respondent re-engaged the petitioner *w.e.f.* 28-7-2012. Petitioner has claimed to have worked continuously without breaks since 28-7-2012 and completed 240 days in each calendar year upto 31-3-2016 and thereafter respondent orally and illegally terminated the services of petitioner *w.e.f.* 1-4-2016 without giving any notice, compensation or inquiry.

3. Petitioner has also pleaded that respondents are giving artificial/fictional breaks willfully in order to deprive petitioner the status of permanent workman/regularization as per the policy of State Government. Further, that employer has changed the service condition of petitioner and is in habit of not issuing muster roll and taking the work on bill basis, which is stated unfair labour practice. On 31-03-2016 Range Officer, Forest Range Jai Devi asked the petitioner not to come on duty from that day onwards. Petitioner has claimed the retrenchment bad in law as provisions of Section 25-F of the Act have not been complied with. He also alleged violation of Sections 25-B, 25-G, 25-H and 25-T of the Act as also principle of 'last come first go'. He has claimed that respondent has illegally terminated the services of petitioner and retained junior workmen in the service who have been regularized. Juniors are stated to have been allowed to complete 240 days in each calendar year whereas petitioner has been discriminated. He has also alleged violation of Articles 14 and 21 of the Constitution and that respondent adopted the policy of 'hire and fire' and 'pick and choose'. Thus, he prayed for re-engagement in service with all consequential benefits, he be not given fictional breaks and granted seniority *w.e.f.* 1-1-1994 and consequential permanent status *i.e.* regularization as also direction to respondent not to change the service condition of petitioner.

4. Respondent contested the claim by filing reply raising preliminary submission that no legal and fundamental right of petitioner has been infringed by the respondent, as such the claim petition is not maintainable. On merits, it is submitted that petitioner was engaged as daily wage worker during December, 1998 on muster roll basis and thereafter petitioner left the work at his own sweet will. Petitioner worked intermittently on bill basis *w.e.f.* April, 2013 to May, 2018. Petitioner was never terminated and he worked intermittently and he left the work at his own sweet will. Petitioner never worked for 240 days continuously in a preceding calendar year. Respondent denied termination of petitioner on 1-4-2016 and claimed that petitioner earlier left the work in December, 1998 at his own sweet will. Respondent pleaded no change in service condition of petitioner. Respondent denied that on 31-03-2016 the Range Officer, Forest Range Jai Devi asked the petitioner not to come on duty. As petitioner never completed 240 days in any calendar year and did not fulfill condition of continuous service under Section 25-B of the Act as such there is no need to serve notice under Section 25-F of the Act. Respondent also denied violation of Sections

25-G, 25-H of the Act, Articles 14 and 21 of Constitution as well adopting the policy of 'hire and fire' and 'pick and choose'. Thus respondent prayed for dismissal of claim petition.

5. Rejoinder was filed by the petitioner denying contents of the reply of respondent and reiterating contents of petition.

6. On the pleadings of parties, following issues were framed on 21-8-2019:—

1. Whether time to time termination of services of the petitioner during the year, 1994 and finally during June, 2016 by the respondent is/was illegal and unjustified, as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR*

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner examined PW1 Shri Surender Kumar who deposed of knowing petitioner and alleged him to be daily wage employee at Forest Range Jai Devi. He deposed that no termination notice and compensation was given by forest department and services of petitioner were retrenched wrongly and illegally. In cross-examination he deposed of working as Peon in Forest Department. Voluntarily stated that from daily wagger he was regularized as Peon. He denied that petitioner was never disengaged from work by department and he voluntarily left the work.

8. Petitioner Sh. Raman Chand himself appeared as PW2 and deposed his claim through sworn affidavit Ex.PW2/A, as pleaded in the claim petition. He tendered in evidence copy of bills for years 2012 to 2016 Ex.PW2/B to Ex.PW2/F, copy of demand notice Ex.PW2/G, copy of letter from Raman Chand & others Ex.PW2/H, copy of judgment of Hon'ble High Court dated 13th June, 2012 Ex.PW2/J, copy of letter seeking seniority list Mark-A, copy of letter Mark-C, copy of Hon'ble High Court judgment dated August 21, 2012 Ex.PW2/K, copy of representation dated 19-6-2014 Mark-B, copy of letter dated 12-9-2012 of Principal Secretary (Forests) pertaining to CWP No. 4294/2012 Ex.PW2/L, copy of letter Ex.PW2/M regarding joining of petitioner, copy of letter dated 15-12-2012 of Divisional Forest Officer Ex.PW2/N regarding engaging of petitioner as fresh hand in connection with CWP No. 4294/2012, copy of tentative seniority list of daily labourers of Suket Forest Division as on 31-3-2014 Ex. PW2/O, reply of Divisional Forest Officer to the demand notice, Ex.PW2/P and copy of letter No. Fts 15-11/2005 (Audit) Ex.PW2/Q. In cross-examination, he denied having been employed in year 1998. Self stated he was employed in year 1994. Denied having voluntarily left work. Also denied that he worked from April, 2013 till May, 2018 on bill basis. Further denied never having completed 240 days in a year and that department never gave him intentional fictional breaks. He deposed of maintaining his dependents by doing agricultural work.

9. Per contra, RW1 Shri Subhash Chand Prashar, Divisional Forest Officer, Suket Forest Division, Sunder Nagar deposed the defence of respondent, through his sworn affidavit Ex.RW1/A. He also tendered in evidence copy of mandays chart of petitioner Ex. RW1/B. In cross-examination, he denied that petitioner was engaged as daily wagger in 1994 and worked till 2004. He denied that petitioner was removed from service in year 2004. Self stated petitioner had worked for 19 days in December, 1998 on muster roll basis and thereafter worked on bill basis. He admitted that Hon'ble High Court *vide* judgment Ex.PW2/J ordered engaging of petitioner. Self

stated subject to conditions mentioned therein. He admitted petitioner was re-engaged on 28-7-2012. Self stated he was engaged on bill basis. He denied petitioner having worked more than 240 days in calendar years from 28-7-2012 to 31-3-2016 and respondent department arbitrarily changed service condition of petitioner from working on muster rolls to bill basis without authority. He also denied that artificial/fictional breaks were given in service to petitioner. He admitted Shri Surinder Kumar s/o Sh. Bhagmal at serial No. 62 in the seniority list Ex.PW2/O to be engaged in February, 2000. He claimed ignorance if Surinder Kumar stands regularized.

10. Learned Deputy District Attorney tendered in evidence copy of notification dated 28-4-2009 Ex. RX.

11. Arguments of learned counsel for the petitioner and learned Deputy District Attorney for the respondent were heard at length and record carefully perused. Learned counsel for petitioner argued that petitioner has continuously worked from 1-1-1994 till 31-3-2016, therefore, he is entitled for the benefits of regularization and his time to time termination of services and final termination *w.e.f.* 01-4-2016 is illegal. He also submitted that respondent has unilaterally changed the service condition of petitioner from working on muster roll to bill basis which is illegal without any notice or permission from the appropriate Government. Therefore, the fictional breaks and final termination be set aside.

12. On the other hand, learned Dy. District Attorney has submitted that petitioner worked on muster rolls for only 19 days in December, 1998 and thereafter he left work at his own. He further submitted that petitioner has worked from April, 2013 to May, 2018 on bill basis as fresh hand in consonance with judgment Ex.PW2/J and thereafter petitioner had not turned up for work. Therefore, petitioner is not entitled to any of the reliefs claimed and respondent has not violated any provision of the Act.

13. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: Partly yes
Issue No. 2	: As per discussion
Issue No. 3	: No
Relief	: Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1 :

14. The case of petitioner is that he was engaged as daily rated beldar *w.e.f.* 1-1-1994 by respondent and he worked upto November, 2004, whereafter his services were orally terminated. Pursuant to the order of Hon'ble High Court of H.P. in CWP No. 4294 of 2012 he was re-engaged on 28-7-2012 and worked upto 31-3-2016 whereafter respondent orally and illegally terminated his service on 1-4-2016. Further, his claim is that respondent has willfully given artificial breaks to deprive him the status of permanent workman/regularization.

15. As against above case respondent has admitted that petitioner was engaged as daily waged worker during December, 1998 on muster roll basis, thereafter he left the work at his own

sweet will. Further, petitioner had worked intermittently on bill basis *w.e.f.* April, 2013 to May, 2018. It is denied that petitioner was terminated on 1-4-2016 or fictional breaks were given to him.

16. Mandays chart Ex.RW1/B tendered in evidence by respondent reveals that petitioner has worked for 19 days in December, 1998 on muster rolls whereafter in 2013, 2014, 2016, 2017 and 2018 petitioner is shown to have been working on bill basis. It is admitted by respondent that petitioner was engaged as daily waged worker during December, 1998. The mandays chart Ex.RW1/B depicts petitioner to have been initially engaged on muster rolls. Why he was re-engaged on bill basis and worked from 2013 to 2018 on bills, has not been satisfactorily explained by the respondent.

17. The defence plank of respondent is that petitioner was considered fresh hand pursuant to Hon'ble High Court judgment Ex.PW2/J and as he worked on bill basis, he cannot be said to be given fictional breaks. Respondent has claimed in his reply that as per Government Notification No.15-11/2005 (Audit) petitioner worked intermittently *w.e.f.* April, 2013 till May, 2018 as per availability of work and funds and as such there is no change in service condition of the petitioner. However, this defence plank/plea is erroneous and not sustainable in law. Admittedly, the petitioner was engaged as daily rated beldar, he worked on muster roll in December, 1998 and thereafter on bill basis. How his service condition has been changed without issuance of any notice in terms of Section 9A of the Act, has not been explained. Though, petitioner is claimed by respondent to have been working on bill basis from April, 2013 to May, 2018 how this change was incorporated in the service condition. Even considering that he was fresh hand in terms of Hon'ble High Court judgment Ex.PW2/J certainly there was/is no authorization for change in service condition of petitioner from working on muster roll to bill basis. Petitioner never consented to work on bill basis. Petitioner has never submitted any bill to the respondent then how he was paid against bills, has not been explained by the respondent.

18. Notification No.15-11/2005 (Audit) has been exhibited by petitioner as Ex.PW2/Q, but same only instructs the DDOs working under CFs, DFOs not to issue blank muster roll in future. Certainly, this notification cannot be taken as a defence to change the service condition of petitioner from muster roll to bill basis. The notification Ex. RX relied upon by learned Dy. District Attorney can in no manner authorize engagement of petitioner on bill basis. This notification has not even been pleaded by respondent in his reply and as such cannot be read in evidence per settled law that no amount of evidence can be looked in to in absence of its pleading. Even if *arguendo* it is considered, it carves out exception that where already continuing daily wagers are involved, who are working for last many years and cannot be removed, in such cases muster roll may be issued with the prior approval/authorization of DFO concerned.

19. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in **Workmen of Food Corporation of India vs. Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670** wherein the wages being paid on piece rate by the Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

“[19]It is at this stage necessary to examine the implication of Sec. 9 A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec 9A which has no relevance

here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent- Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item I in the Fourth Schedule provides: 'wages, including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

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21. It has been held by the Hon'ble Apex Court in **Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Ltd. 2014 LawSuit (SC) 369, 2014 (11) SCC 85, 2014 AIR (SC) 2258**, as under:—

[23]. Very interestingly, the periods of service extends to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates 'unfair labour practice as defined under Section 2(ra) of the I.D. Act, which is not permissible in view of Sections 25T and 25U of the I.D. Act.

22. It is also important to take note of observations of Hon'ble Apex Court in **Secretary, Haryana State Electricity Board v/s Suresh 1999 LawSuit (SC) 380, 1999 AIR (SC) 1160**, to the following effect:—

“[17].....As a matter of fact law is well settled by this court and we need not dilate much by reason, therefore to the effect that the law courts exist for the society and in the event of there being a question posed in the matter of interpretation of a beneficial piece of legislation, question of interpreting the same with a narrow pedantic approach would not be justified. On the contrary, the widest possible meaning and amplitude ought to be offered to the expressions used as otherwise the entire legislation would loose its efficacy and contract labour would be left on the mercy of the intermediary”.

[18]The democratic polity ought to survive with full vigour: socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective

the question arises—is it permissible in the new millennium to decry the cry of the labour force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution—the answer cannot possibly be in the affirmative—the law courts exist for the society and in the event law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought rise up to the occasion to meet and redress the expectation of the people.....

23. The respondent without any agreement with the petitioner to work on bill basis, has obtained work from him on bill basis for five years. Against which, the petitioner filed representation dated 19-6-2014 Mark-B to the Secretary Forests, which has not been denied, to provide appropriate seniority to the petitioner and also for issuance of regular muster roll. However, respondent did not pay heed to the same and continued to obtain work from petitioner on bill basis. This is against the spirit of the Act and respondent cannot be permitted to employ petitioner on bill basis for years together denying him benefits payable to permanent/regular workman. These breaks in service amount to unfair labour practice under Section 2(ra) specified in Clause 10 of Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

“2(10) To employ workmen as “badlis”, casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen”.

24. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent being the State under Article 12 of Constitution has to behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a poor person as claimed by him. He cannot be deprived benevolent provisions of the Act as working on bill basis is nothing but refusal by the respondent to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. Our Hon’ble High Court in recent judgment **Keshav Ram vs. State of H.P. & Others 2020 LawSuit (HP) 215** has held the following:

“Beli Ram vs. State of H.P. and others decided on 02-06-2009, in which this Court has held as under:—

“The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/ nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State. Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are

accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001."

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15-06-2009, this Court has held as under:—

"It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219 ½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the provisions of *Industrial Disputes Act, 1947* as well as to seen regularization after putting in requisite number of years."

25. It is also apposite to mention that the definition of continuous service in Section 25-B of the Act clearly specifies that workman shall be said to be in continuous service if he is for that period, in uninterrupted service, including service which may be interrupted on account of cessation of work which is not due to any fault on the part of the workman. Petitioner has claimed to be working throughout and respondent has alleged that he left the work of his own. It is observed that abandonment has not been proved by respondent. It is also not proved by respondent that Forest is a seasonal industry. The work is available throughout the year as other daily wage labourers are proved on record to be working as per seniority list Ex.PW2/O and the petitioner thus stands discriminated against the other workers in respect of whom seniority list was issued as on 31-3-2014. If there was no work available throughout the year how and why respondent issued tentative seniority list of daily labourers who are shown to have been engaged on different dates. Thus, pleas of abandonment, seasonal work and availability of work as well engaging petitioner on bill basis is camouflage, just to deprive petitioner of regular status of daily wager as well regularization benefit on completion of 240 days in calendar years and so the intermittent breaks are held artificial and fictional.

26. Thus, in view of the mandate of aforementioned law laid down by Hon'ble Apex Court and Hon'ble High Court the artificial breaks given in service during the period of alleged working on bill basis are held unjustified and illegal, liable to be set aside. RW1 has admitted that petitioner was re-engaged on 28-7-2012. Bill Ex. RW2/B also shows payment made to petitioner for the month of August, 2012. In view of judgment of Hon'ble High Court of H.P. Ex.PW2/J petitioner has been engaged as fresh hand in preference to fresh recruits, as such he is entitled for service benefits only from the date of re-engagement *i.e.* 28-7-2012 and consequently in view of illegal artificial/fictional breaks given, he is entitled to be deemed in continuous service from 28-7-2012 till June, 2016 in terms of reference alongwith consequential benefit of seniority, except back wages.

27. Now coming to the question of final termination, it is observed that petitioner has claimed his final termination on 1-4-2016 which as per reference is June, 2016 but respondent has denied ever terminating the services of petitioner and specifically pleaded that petitioner worked

intermittently on bill basis from April, 2013 till May, 2018. The plea of abandonment, as earlier observed, has not been proved by the respondent which as per the law is required to be proved like any other fact as held by Hon'ble High Court *ibid*. Further, the mandays chart Ex,RW1/B shows petitioner to have worked on bill basis till May, 2018. Thus, there is no final termination on 1-4-2016 or June, 2016 per reference and petitioner is deemed to have worked as daily wager continuously from 28-7-2012 to June, 2016 in terms of reference. Accordingly, Issue No.1 decided in above terms.

Issue No. 2 :

28. As the fictional breaks given to petitioner from 28-7-2012 till June, 2016 are declared unjustified and illegal, petitioner is held entitled to consequential benefits of seniority from 28-7-2012, except back wages because petitioner has admittedly obtained wages/payments from respondent though on bill basis during said period. Issue No. 2 is accordingly decided.

Issue No.3 :

29. In view of positive findings on issues No. 1 and 2, the claim petition is held maintainable. Even otherwise, respondent has not proved or established the petition to be not maintainable. Accordingly, issued no.3 is answered in negative against the respondent.

Relief :

30. As a sequel to the findings of this Court on the issues above, the claim petition succeeds in part and is partly allowed. The claim of petitioner with regards final termination of his services *w.e.f.* 1-4-2016/June, 2016 is dismissed. However, it is held that artificial/fictional breaks in service provided to the petitioner by respondent from 28-7-2012 till June, 2016 are unjustified and illegal. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged worker, except back wages. His seniority shall be reckoned from the date of his engagement as fresh hand with the respondent on 28-7-2012. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2022.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 197/2017
Date of Institution	: 14-9-2017
Date of Decision	: 21-1-2022

Shri Thakur Dass s/o Shri Bhagat Ram, r/o Village Saran, P.O. Chowki, Sub Tehsil Nihri, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Arya, Ld. Advocate

For the Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

“Whether the alleged termination of services of Shri Thakur Dass s/o Shri Bhagat Ram, r/o Village Saran, P.O. Chowki, Sub Tehsil Nihri, District Mandi, H.P. from time to time during year, 1994 and finally terminated during June, 2016 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?”

2. In nutshell, petitioner has averred in the claim petition to have been initially engaged as daily rated beldar *w.e.f.* 1-1-1994 with respondent and worked in Forest Range Jai Devi, Forest Division Sunder Nagar, District Mandi, H.P. He worked continuously *w.e.f.* 1-1-1994 upto December, 2005 and thereafter his services were orally terminated by respondent without issuing any notice or retrenchment compensation and inquiry. Against oral termination he raised the dispute before Labour and Conciliation Officer, Mandi who referred the matter under Section 12(4) of the Act to the appropriate Government. However, Labour Commissioner refused to make reference on the ground of delay *vide* order dated 31-3-2012. Petitioner challenged order dated 31-3-2012 before Hon'ble High Court of H.P. by way of CWP 4294 of 2012 and Hon'ble High Court *vide* order dated 13-6-2012 directed the respondents that in case petitioner has actually worked under the respondent, in case there is work available and respondent requires additional manpower, petitioner shall be engaged as fresh, hand in preference to the fresh recruits. Pursuant to aforesaid order respondent re-engaged the petitioner *w.e.f.* 28-7-2012. Petitioner has claimed to have worked continuously without breaks and completed 240 days in each calendar year upto 31-3-2016 and thereafter respondent orally and illegally terminated the services of petitioner *w.e.f.* 1-4-2016 without giving any notice, compensation or inquiry.

3. Petitioner has also pleaded that respondents are giving artificial/fictional breaks willfully in order to deprive petitioner the status of permanent workman/regularization as per the policy of State Government. Further that employer has changed the service condition of petitioner and is in habit of not issuing muster roll and taking the work on bill basis, which is stated unfair labour practice. On 31-3-2016 Range Officer, Forest Range Jai Devi asked the petitioner not to come on duty from that day onwards. Petitioner has claimed the retrenchment bad in law as

provisions of Section 25-F of the Act have not been complied with. He also alleged violation of Sections 25-B, 25-G, 25-H and 25-T of the Act as also principle of 'last come first go'. He has claimed that respondent has illegally terminated the services of petitioner and retained junior workmen in the service who have been regularized. Juniors are stated to have been allowed to complete 240 days in each calendar year whereas petitioner has been discriminated. He has also alleged violation of Articles 14 and 21 of the Constitution and that respondent adopted the policy of 'hire and fire' and 'pick and choose'. Thus, he prayed for re-engagement in service with all consequential benefits, he be not given fictional breaks and granted seniority *w.e.f.* 1-1-1994 and consequential permanent status *i.e.* regularization as also direction to respondent not to change the service condition of petitioner.

4. Respondent contested the claim by filing reply raising preliminary submission that no legal and fundamental right of petitioner has been infringed by the respondent, as such the claim petition is not maintainable. On merits, it is submitted that petitioner was engaged as daily wage worker during December, 1994 on muster roll basis and thereafter petitioner left the work at his own sweet will. Petitioner worked intermittently on bill basis *w.e.f.* April, 2013 to December, 2017. Petitioner was never terminated and he worked intermittently and he left the work at his own sweet will. Petitioner never worked for 240 days continuously in a preceding calendar year. Respondent denied termination of petitioner on 1-4-2016 and claimed that petitioner left the work in December, 1994 at his own sweet will. Respondent pleaded no change in service condition of petitioner. Respondent denied that on 31-3-2016 the Range Officer, Forest Range Jai Devi asked the petitioner not to come on duty. As petitioner never completed 240 days in any calendar year and did not fulfill condition of continuous service under Section 25-B of the Act as such there is no need to serve notice under Section 25-F of the Act. Respondent also denied violation of Sections 25-G, 25-H of the Act, Articles 14 and 21 of Constitution as well adopting the policy of 'hire and fire' and 'pick and choose'. Thus, respondent prayed for dismissal of claim petition.

5. Rejoinder was filed by the petitioner denying contents of the reply of respondent and reiterating contents of petition.

6. On the pleadings of parties, following issues were framed on 21-8-2019:—

1. Whether time to time termination of services of the petitioner during the year, 1994 and finally during June, 2016 by the respondent is/was illegal and unjustified, as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner examined PW1 Shri Surender Kumar who deposed of knowing petitioner and alleged him to be daily wage employee at Forest Range Jai Devi. He deposed that no termination notice and compensation was given by forest department and services of petitioner were retrenched wrongly and illegally. In cross-examination he deposed of working as Peon in Forest Department. Voluntarily stated that from daily wage he was regularized as Peon. He denied that petitioner was never disengaged from work by department and he voluntarily left the work.

8. Petitioner Sh. Thakur Dass himself appeared as PW2 and deposed his claim through sworn affidavit Ex.PW2/A, as pleaded in the claim petition. He tendered in evidence copy of bills

for years 2012 to 2016 Ex.PW2/B to Ex.PW2/F, copy of demand notice Ex.PW2/G, copy of letter from Raman Chand & others Ex.PW2/H, copy of judgment of Hon'ble High Court dated 13th June, 2012 Ex.PW2/J, copy of letter seeking seniority list Mark-A, copy of Hon'ble High Court judgment dated August 21, 2012 Ex.PW2/K, copy of representation dated 19-6-2014 Mark-B, copy of letter dated 12-9-2012 of Principal Secretary pertaining to CWP No.4294/2012 Ex.PW2/L, copy of letter Ex.PW2/M regarding joining of petitioner, copy of letter dated 15-12-2012 of Divisional Forest Officer Ex.PW2/N regarding engaging of petitioner as fresh hand in connection with CWP No.4294/2012, copy of tentative seniority list of daily labourers of Suket Forest Division as on 31-03-2014 Ex.PW2/O, and reply of Divisional Forest Officer to the demand notice, Ex.PW2/P. In cross-examination, he denied joining in 1996. He admitted having worked from April, 2013 till December, 2017 on bill basis. Denied having never worked in the preceding year of demand notice for 240 days. Denied having worked till 2017 therefore could not have been terminated in 2016. He claimed ignorance if the date of termination as mentioned in reference is different from his claim petition. Admitted having left the work in year 1994. Self stated he was immature of 14 years. He deposed of having 8-9 big has land and earning from agriculture.

9. Per contra, RW1 Shri Subhash Chand Prashar, Divisional Forest Officer, Suket Forest Division, Sunder Nagar deposed the defence of respondent through his sworn affidavit Ex.RW1/A. He also tendered copy of mandays chart of petitioner Ex.RW1/B. In cross-examination, he denied that petitioner was engaged as daily wager in 1994 and worked till December, 2005. He denied that petitioner was removed from service in year 2005. Self stated petitioner had worked for 5 days in December, 1994 and thereafter worked on bill basis. He admitted that Hon'ble High Court *vide* judgment Ex.PW2/J ordered engaging of petitioner. Self stated subject to conditions mentioned therein. He admitted petitioner was re-engaged on 28-7-2012. Self stated he was engaged on bill basis. He denied petitioner having worked more than 240 days in calendar years from 28-7-2012 to 31-3-2016. He also denied that artificial/fictional breaks were given in service to petitioner. He admitted Shri Surender Kumar s/o Sh. Bhagmal at serial No. 62 in the seniority list Ex.PW2/O to be engaged in February, 2000. He claimed ignorance if Surender Kumar stands regularized.

10. Learned Deputy District Attorney tendered in evidence copy of notification dated 28-4-2009 Ex. RX.

11. Arguments of learned counsel for the petitioner and learned Deputy District Attorney for the respondent were heard and record carefully perused. Learned counsel for petitioner argued that petitioner has continuously worked from 1-1-1994 till 31-3-2016. Therefore, he is entitled for the benefits of regularization and his time to time termination of services and final termination *w.e.f.* 1-4-2016 is illegal. He also submitted that respondent has unilaterally changed the service condition of petitioner from working on muster roll to bill basis which is illegal without any notice or permission from the appropriate Government. Therefore, the fictional breaks and final termination be set aside.

12. On the other hand, learned Dy. District Attorney has submitted that petitioner worked on muster roll for only 5 days in December, 1994, thereafter he left work at his own. He further submitted that petitioner has worked intermittently from April, 2013 to December, 2017 on bill basis as fresh hand in consonance with judgment Ex.PW2/J and thereafter petitioner had not turned up for work. Therefore, petitioner is not entitled to any of the reliefs claimed and respondent has not violated any provision of the Act.

13. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1

: Partly yes

Issue No. 2	: As per discussion
Issue No. 3	: No
Relief	: Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1:

14. The case of petitioner is that he was engaged as daily rated beldar *w.e.f.* 1-1-1994 by respondent and he worked upto December, 2005 where after his services were orally terminated. Pursuant to the order of Hon'ble High Court of H.P. in CWP No. 4294 of 2012 he was re-engaged on 28-7-2012 and worked upto 31-3-2016 where after respondent orally and illegally terminated his service on 1-4-2016. Further, his claim is that respondent has willfully given artificial breaks to deprive him the status of permanent workman/regularization.

15. As against above case respondent has admitted that petitioner was engaged as daily waged worker during December, 1994, thereafter he left the work at his own sweet will. Further, petitioner had worked intermittently on bill basis *w.e.f.* April, 2013 to December, 2017. It is denied that petitioner was terminated on 1-4-2016 or fictional breaks were given to him.

16. Mandays chart Ex.RW1/B tendered in evidence by RW1, reveals that petitioner has worked for 5 days in December, 1994 on muster roll where after in 2013, 2014, 2015, 2016 and 2017 petitioner is shown to have been working on bill basis. It is admitted by respondent that petitioner was engaged as daily waged worker during December, 1994. The mandays chart Ex.RW1/B depicts petitioner to have been initially engaged on muster rolls. Why he was re-engaged on bill basis and worked from 2012 to 2017 on bills has not been satisfactorily explained by the respondent.

17. The defence plank of respondent is that petitioner was considered fresh hand pursuant to Hon'ble High Court judgment Ex.PW2/J and as he worked on bill basis, he cannot be said to be given fictional breaks. Respondent has claimed in his reply that as per Government Notification No.15-11/2005 (Audit) petitioner worked intermittently *w.e.f.* April, 2013 till December, 2017 as per availability of work and funds and as such there is no change in service condition of the petitioner. However, this defence plank/plea is erroneous and not sustainable in law. Admittedly, the petitioner was engaged as daily rated beldar, he worked on muster roll in 1994 and thereafter on bill basis. How his service condition has been changed without issuance of any notice in terms of Section 9A of the Act has not been explained. Though, petitioner is claimed by respondent to have been working on bill basis from April, 2013 to December, 2017 how this change was incorporated in the service condition. Even considering that he was fresh hand in terms of Hon'ble High Court judgment Ex.PW2/J certainly there was/is no authorization for change in service condition of petitioner from working on muster roll to bill basis. Petitioner never consented to work on bill basis. Petitioner has never submitted any bill to the respondent then how he was paid against bills, has not been explained by the respondent.

18. Copy of Notification No. 15-11/2005 (Audit) in the Court file reveals that same only instructs the DDOs working under CFs, DFOs not to issue blank muster roll in future. Certainly, this notification cannot be taken as a defence to change the service condition of petitioner from muster roll to bill basis. The notification Ex. RX relied upon by learned Dy. District Attorney can in no manner authorize engagement of petitioner on bill basis. This notification has not even been

pleaded by respondent in his reply and as such cannot be read in evidence per settled law that no amount of evidence can be looked in to in absence of its pleading. Even if arguendo it is considered, it carves out exception that where already continuing daily wagers are involved, who are working for last many years and cannot be removed, in such cases muster roll may be issued with the prior approval/authorization of DFO concerned.

19. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in **Workmen of Food Corporation of India vs. Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670** wherein the wages being paid on piece rate by the Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

“[19]It is at this stage necessary to examine the implication of Sec. 9A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent-Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item I in the Fourth Schedule provides: 'wages, Including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

20. Hon'ble Apex Court in **Workmen of Food Corporation of India vs. Food Corporation of India** supra has categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9A of I.D. Act, the same would amount to illegal change. Section 9A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service.

21. It has been held by the Hon'ble Apex Court in **Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Ltd. 2014 LawSuit (SC) 369, 2014 (11) SCC 85, 2014 AIR (SC) 2258,** as under:—

[23]. Very interestingly, the periods of service extends to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a

temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates 'unfair labour practice as defined under Section 2(ra) of the I.D. Act, which is not permissible in view of Sections 25T and 25U of the I.D. Act.

22. It is also important to take note of observations of Hon'ble Apex Court in **Secretary, Haryana State Electricity Board v/s Suresh 1999 LawSuit (SC) 380, 1999 AIR (SC) 1160**, to the following effect:—

“[17].....As a matter of fact law is well settled by this court and we need not dilate much by reason, therefore to the effect that the law courts exist for the society and in the event of there being a question posed in the matter of interpretation of a beneficial piece of legislation, question of interpreting the same with a narrow pedantic approach would not be justified. On the contrary, the widest possible meaning and amplitude ought to be offered to the expressions used as otherwise the entire legislation would loose its efficacy and contract labour would be left on the mercy of the intermediary”.

[18]The democratic polity ought to survive with full vigour: socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises-is it permissible in the new millennium to decry the cry of the labour force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution-the answer cannot possibly be in the affirmative-the law courts exist for the society and in the event law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought rise up to the occasion to meet and redress the expectation of the people.....

23. The respondent without any agreement with the petitioner to work on bill basis, has obtained work from him on bill basis for five years. Against which, the petitioner filed representation dated 19-6-2014 Mark-B to the Secretary Forests, which has not been denied, to provide appropriate seniority to the petitioner and also for issuance of regular muster roll. However, respondent did not pay heed to the same and continued to obtain work from petitioner on bill basis. This is against the spirit of the Act and respondent cannot be permitted to employ petitioner on bill basis for years together denying him benefits payable to permanent/regular workman. These breaks in service amount to unfair labour practice under Section 2(ra) specified in Clause 10 of Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

“2(10) To employ workmen as “badlis”, casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen”.

24. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent being the State under Article 12 of Constitution has to behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a poor person as claimed by him. He cannot be deprived benevolent provisions of the Act as working on bill basis is nothing but refusal by the respondent to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. Our Hon'ble High Court in recent judgment **Keshav Ram vs. State of H.P. & Others 2020 LawSuit (HP) 215** has held the following:

“Beli Ram vs. State of H.P. and others decided on 02-06-2009, in which this Court has held as under:—

“The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower

strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/ nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State.

Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001."

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15-06-2009, this Court has held as under:—

"It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219 ½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years."

25. It is also apposite to mention that the definition of continuous service in Section 25-B of the Act clearly specifies that workman shall be said to be in continuous service if he is for that period, in uninterrupted service, including service which may be interrupted on account of cessation of work which is not due to any fault on the part of the workman. Petitioner has claimed to be working throughout and respondent has alleged that he left the work of his own. It is observed that abandonment has not been proved by respondent. It is also not proved by respondent that Forest is a seasonal industry. The work is available throughout the year as other daily wage labourers are proved on record to be working as per seniority list Ex.PW2/O and the petitioner thus stands discriminated against the other workers in respect of whom seniority list was issued as on 31-3-2014. If there was no work available throughout the year how and why respondent issued tentative seniority list of daily labourers who are shown to have been engaged on different dates. Thus, pleas of abandonment, seasonal work and availability of work as well engaging petitioner on

bill basis is camouflage just to deprive petitioner of regular status of daily wager as well regularization benefit on completion of 240 days in calendar years and so the intermittent breaks are held artificial and fictional.

26. Thus, in view of the mandate of aforementioned law laid down by Hon'ble Apex Court and Hon'ble High Court the artificial breaks given in service during the period of alleged working on bill basis are held unjustified and illegal, liable to be set aside. RW1 has admitted that petitioner was re-engaged on 28-7-2012. Bill Ex. RW2/B also shows payment made to petitioner for the month of August, 2012. In view of judgment of Hon'ble High Court of H.P. Ex.PW2/J petitioner has been engaged as fresh hand in preference to fresh recruits, as such he is entitled for service benefits only from the date of re-engagement *i.e.* 28-7-2012 and consequently in view of illegal artificial/fictional breaks given, he is entitled to be deemed in continuous service from 28-7-2012 till June, 2016 in terms of reference alongwith consequential benefit of seniority, except back wages.

27. Now coming to the question of final termination, it is observed that petitioner has claimed his final termination on 1-4-2016 which as per reference is June, 2016 but respondent has denied ever terminating the services of petitioner and specifically pleaded that petitioner worked intermittently on bill basis from April, 2013 till December, 2017. The plea of abandonment, as earlier observed, has not been proved by the respondent which as per the law is required to be proved like any other fact as held by Hon'ble High Court *ibid*. Further, the mandays chart Ex.RW1/B shows petitioner to have worked on bill basis till December, 2017. Thus, there is no final termination on 1-4-2016 or June, 2016 per reference and petitioner is deemed to have worked as daily wager continuously from 28-7-2012 to June, 2016 in terms of reference. Accordingly, issue No. 1 decided in above terms.

Issue No. 2 :

28. As the fictional breaks given to petitioner from 28-7-2012 till June, 2016 are declared unjustified and illegal, petitioner is held entitled to consequential benefits of seniority from 28-7-2012, except back wages because petitioner has admittedly obtained wages/payments from respondent though on bill basis during said period. Issue No. 2 is accordingly decided.

Issue No. 3 :

29. In view of positive findings on issues No. 1 and 2, the claim petition is held maintainable. Even otherwise, respondent has not proved or established the petition to be not maintainable. Accordingly, issued No. 3 is answered in negative against the respondent.

Relief :

30. As a sequel to the findings of this Court on the issues above, the claim petition succeeds in part and is partly allowed. The claim of petitioner with regards final termination of his services *w.e.f.* 1-4-2016/June, 2016 is dismissed. However, it is held that artificial/fictional breaks in service provided to the petitioner by respondent from 28-7-2012 till June, 2016 are unjustified and illegal. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged worker, except back wages. His seniority shall be reckoned from the date of his engagement as fresh hand with the respondent on 28-7-2012. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2022.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI ARVIND MALHOTRA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 198/2017
Date of Institution : 14-9-2017
Date of Decision : 21-1-2022

Shri Hem Raj alias Himtu s/o Shri Madan Lal, r/o Village Saran, P.O. Chowki, Sub Tehsil Nihri, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Arya, Ld. Advocate
For the Respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

Reference under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the following effect has been received for adjudication from the appropriate Government:

“Whether the alleged termination of services of Shri Hem Raj alias Himtu s/o Shri Madan Lal, r/o Village Saran, P.O. Chowki, Sub Tehsil Nihri, District Mandi, H.P. from time to time during year, 1996 and finally terminated during June, 2016 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?”

2. In nutshell, petitioner has averred in the claim petition to have been initially engaged as daily rated beldar *w.e.f.* 1-1-1996 with respondent and worked in Forest Range Jai Devi, Forest Division Sunder Nagar, District Mandi, H.P. He worked continuously *w.e.f.* 1-1-1996 uptil

December, 2001 and thereafter his services were orally terminated by respondent without issuing any notice or retrenchment compensation and inquiry. Against oral termination he raised the dispute before Labour and Conciliation Officer, Mandi who referred the matter under Section 12(4) of the Act to the appropriate Government. However, Labour Commissioner refused to make reference on the ground of delay *vide* order dated 31-3-2012. Petitioner challenged order dated 31-3-2012 before Hon'ble High Court of H.P. by way of CWP 4294 of 2012 and Hon'ble High Court *vide* order dated 13-6-2012 directed the respondents that in case petitioner has actually worked under the respondent, in case there is work available and respondent requires additional manpower, petitioner shall be engaged as fresh hand in preference to the fresh recruits. Pursuant to aforesaid order respondent re-engaged the petitioner *w.e.f.* 28-7-2012. Petitioner has claimed to have worked continuously without breaks and completed 240 days in each calendar year upto 31-3-2016 and thereafter respondent orally and illegally terminated the services of petitioner *w.e.f.* 1-4-2016 without giving any notice, compensation or inquiry.

3. Petitioner has also pleaded that respondents are giving artificial/fictional breaks willfully in order to deprive petitioner the status of permanent workman/regularization as per the policy of State Government. Further, that employer has changed the service condition of petitioner and is in habit of not issuing muster roll and taking the work on bill basis, which is stated unfair labour practice. On 31-3-2016 Range Officer, Forest Range Jai Devi asked the petitioner not to come on duty from that day onwards. Petitioner has claimed the retrenchment bad in law as provisions of Section 25-F of the Act have not been complied with. He also alleged violation of Sections 25-B, 25-G, 25-H and 25-T of the Act as also principle of 'last come first go'. He has claimed that respondent has illegally terminated the services of petitioner and retained junior workmen in the service who have been regularized. Juniors are stated to have been allowed to complete 240 days in each calendar year whereas petitioner has been discriminated. He has also alleged violation of Articles 14 and 21 of the Constitution and that respondent adopted the policy of 'hire and fire' and 'pick and chose'. Thus, he prayed for re-engagement in service with all consequential benefits, he be not given fictional breaks and granted seniority *w.e.f.* 1-1-1996 and consequential permanent status *i.e.* regularization as also direction to respondent not to change the service condition of petitioner.

4. Respondent contested the claim by filing reply raising preliminary submission that no legal and fundamental right of petitioner has been infringed by the respondent, as such the claim petition is not maintainable. On merits, it is submitted that petitioner was engaged as daily wage worker *w.e.f.* June, 1996 who worked intermittently upto January, 1999 on muster roll basis and thereafter petitioner left the work at his own sweet will. Petitioner worked intermittently on bill basis *w.e.f.* April, 2013 to June, 2018. Petitioner was never terminated and he worked intermittently and he left the work at his own sweet will. Petitioner never worked for 240 days continuously in a preceding calendar year. Respondent denied termination of petitioner on 1-4-2016 and claimed that petitioner left the work in January, 1999 at his own sweet will. Respondent pleaded no change in service condition of petitioner. Respondent denied that on 31-3-2016 the Range Officer, Forest Range Jai Devi asked the petitioner not to come on duty. As petitioner never completed 240 days in any calendar year and did not fulfill condition of continuous service under Section 25-B of the Act and as such there is no need to serve notice under Section 25-F of the Act. Respondent also denied violation of Sections 25-G, 25-H of the Act, Articles 14 and 21 of Constitution as well adopting the policy of 'hire and fire' and 'pick and choose'. Thus, respondent prayed for dismissal of claim petition.

5. Rejoinder was filed by the petitioner denying contents of the reply of respondent and reiterating contents of petition.

6. On the pleadings of parties, following issues were framed on 21-8-2019:—

1. Whether time to time termination of services of the petitioner during the year, 1996 and finally during June, 2016 by the respondent is/was illegal and unjustified, as alleged? . . . *OPP*.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR*.

Relief.

7. Parties to the lis adduced evidence in support of their claims. Petitioner examined PW1 Shri Surender Kumar who deposed of knowing petitioner and alleged him to be daily wage employee at Forest Range Jai Devi. He deposed that no termination notice and compensation was given by forest department and services of petitioner were retrenched wrongly and illegally. In cross-examination he deposed of working as Peon in Forest Department. Voluntarily stated that from daily wager he was regularized as Peon. He denied that petitioner was never disengaged from work by department and he voluntarily left the work.

8. Petitioner Sh. Hem Raj himself appeared as PW2 and deposed his claim through sworn affidavit Ex.PW2/A, as pleaded in the claim petition. He tendered in evidence copy of bills for years 2013 to 2016 Ex.PW2/B to Ex.PW2/E, copy of mandays chart/Bill detail Ex.PW2/F, copy of demand notice Ex.PW2/G, copy of letter from Raman Chand & others Ex.PW2/H, copy of judgment of Hon'ble High Court dated 13th June, 2012 Ex.PW2/J, copy of letter seeking seniority list Mark-A, copy of letter Mark-C, copy of Hon'ble High Court judgment dated August 21, 2012 Ex.PW2/K, copy of representation dated 19-6-2014 Mark-B, copy of letter dated 12-9-2012 of Principal Secretary pertaining to CWP No.4294/2012 Ex.PW2/L, copy of letter Ex.PW2/M regarding joining of petitioner, copy of letter dated 15-12-2012 of Divisional Forest Officer Ex.PW2/N regarding engaging of petitioner as fresh hand in connection with CWP No. 4294/2012, copy of tentative seniority list of daily labourers of Suket Forest Division as on 31-3-2014 Ex.PW2/O, reply of Divisional Forest Officer to the demand notice, Ex.PW2/P and copy of letter No.Fts 15-11/2005 (Audit) Ex.PW2/Q. In cross-examination, he admitted having been employed in June, 1996. Denied having worked intermittently between June, 1996 to January, 1999. Further denied never having completed 240 days in a year prior to his demand notice. Denied that between April, 2013 to June, 2018 he worked on bill basis. He admitted that in year 2017 and 2018 he was given work by the department but claimed ignorance whether the work in 2017 and 2018 was on bill basis. He denied that as he was provided work in 2017 and 2018 as such not disengaged in 2016. He admitted that the department even two months earlier had provided him work. He deposed of having 2-3 bighas land and maintaining seventeen family members by doing agriculture and working elsewhere.

9. Per contra, RW1 Shri Subhash Chand Prashar, Divisional Forest Officer, Suket Forest Division, Sunder Nagar deposed the defence of respondent, through his sworn affidavit Ex.RW1/A. In cross-examination, he denied that petitioner was engaged as daily wager in January, 1996 and he worked till December, 2001. He denied that petitioner was removed from service in year 2001. Self stated petitioner was engaged in June, 1996 and he continued to work on muster roll basis till January, 1999 as per Ex.PW2/F and thereafter worked on bill basis. He admitted that Hon'ble High Court *vide* judgment Ex.PW2/J ordered engaging of petitioner. Self stated subject to conditions mentioned therein. He admitted petitioner was re-engaged on 28-7-2012. Self stated he was engaged on bill basis. He denied petitioner having worked more than 240 days in calendar years from 28-7-2012 to 31-3-2016 and respondent department arbitrarily changed service condition of petitioner from working on muster rolls to bill basis without authority. He also denied that artificial/

fictional breaks were given in service to petitioner. He admitted Shri Surinder Kumar s/o Sh. Bhagmal at serial No. 62 in the seniority list Ex.PW2/O to be engaged in February, 2000. He claimed ignorance if Surinder Kumar stands regularized.

10. Learned Deputy District Attorney tendered in evidence copy of notification dated 28-4-2009 Ex. RX.

11. Arguments of learned counsel for the petitioner and learned Deputy District Attorney for the respondent were heard at length and record carefully perused. Learned counsel for petitioner argued that petitioner has continuously worked from 1-1-1996 till 31-3-2016, therefore, he is entitled for the benefits of regularization and his time to time termination of services and final termination *w.e.f.* 1-4-2016 is illegal. He also submitted that respondent has unilaterally changed the service condition of petitioner from working on muster roll to bill basis which is illegal without any notice or permission from the appropriate Government. Therefore, the fictional breaks and final termination be set aside.

12. On the other hand, learned Dy. District Attorney has submitted that petitioner worked intermittently on muster rolls from June, 1996 till January, 1999 and thereafter he left work at his own. He further submitted that petitioner has worked from April, 2013 to June, 2018 on bill basis as fresh hand in consonance with judgment Ex.PW2/J and thereafter petitioner had not turned up for work. Therefore, petitioner is not entitled to any of the reliefs claimed and respondent has not violated any provision of the Act.

13. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: Partly yes
Issue No. 2	: As per discussion
Issue No. 3	: No
Relief	: Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1 :

14. The case of petitioner is that he was engaged as daily rated beldar *w.e.f.* 1-1-1996 by respondent and he worked upto December, 2001 where after his services were orally terminated. Pursuant to the order of Hon'ble High Court of H.P. in CWP No. 4294 of 2012 he was re-engaged on 28-7-2012 and worked upto 31-3-2016 where after respondent orally and illegally terminated his service on 1-4-2016. Further, his claim is that respondent has willfully given artificial breaks to deprive him the status of permanent workman/regularization.

15. As against above case respondent has admitted that petitioner was engaged as daily waged worker *w.e.f.* June, 1996 and he worked intermittently upto January, 1999 on muster roll basis, thereafter he left the work at his own sweet will. Further, petitioner had worked intermittently on bill basis *w.e.f.* April, 2013 to June, 2018. It is denied that petitioner was terminated on 1-4-2016 or fictional breaks were given to him.

16. Mandays chart Ex.PW2/F tendered in evidence by petitioner and not disputed by the respondent, reveals that petitioner has worked for 19 days in 1996, 18 days in 1997, 75 days in 1998 and 27 days in 1999 on muster rolls where after in 2013, 2014, 2015, 2016, 2017 and 2018 petitioner is shown to have been working on bill basis. It is admitted by respondent that petitioner was engaged as daily waged worker *w.e.f.* June, 1996. The mandays chart Ex.PW2/F depicts petitioner to have been initially engaged on muster rolls. Why he was re-engaged on bill basis and worked from 2012 to 2018 on bills has not been satisfactorily explained by the respondent.

17. The defence plank of respondent is that petitioner was considered fresh hand pursuant to Hon'ble High Court judgment Ex.PW2/J and as he worked on bill basis, he cannot be said to be given fictional breaks. Respondent has claimed in his reply that as per Government Notification No.15-11/2005 (Audit) petitioner worked intermittently *w.e.f.* April, 2013 to June, 2018 as per availability of work and funds and as such there is no change in service condition of the petitioner. However, this defence plank/plea is erroneous and not sustainable in law. Admittedly, the petitioner was engaged as daily rated beldar, he worked on muster roll from 1996 till 1999 and thereafter on bill basis. How his service condition has been changed without issuance of any notice in terms of Section 9A of the Act, has not been explained. Though, petitioner is claimed by respondent to have been working on bill basis from April, 2013 to June, 2018 how this change was incorporated in the service condition. Even considering that he was fresh hand in terms of Hon'ble High Court judgment Ex.PW2/J certainly there was/is no authorization for change in service condition of petitioner from working on muster roll to bill basis. Petitioner never consented to work on bill basis. Petitioner has never submitted any bill to the respondent then how he was paid against bills, has not been explained by the respondent.

18. Notification No.15-11/2005 (Audit) has been exhibited by petitioner as Ex.PW2/Q but same only instructs the DDOs working under CFs, DFOs not to issue blank muster roll in future. Certainly, this notification cannot be taken as a defence to change the service condition of petitioner from muster roll to bill basis. The notification Ex. RX relied upon by learned Dy. District Attorney can in no manner authorize engagement of petitioner on bill basis. This notification has not even been pleaded by respondent in his reply and as such cannot be read in evidence per settled law that no amount of evidence can be looked in to in absence of its pleading. Even if *arguendo* it is considered, it carves out exception that where already continuing daily wagers are involved, who are working for last many years and cannot be removed, in such cases muster roll may be issued with the prior approval/authorization of DFO concerned.

19. At this juncture, it is apposite to note observations of Full Bench of Hon'ble Apex Court in **Workmen of Food Corporation of India vs. Food Corporation of India Ltd. 1985 LawSuit (SC) 71, 1985 AIR (SC) 670** wherein the wages being paid on piece rate by the Corporation to the employees was held not to affect the employer-employee relationship. Hon'ble Apex Court further held the implication of Section 9A of the Industrial Disputes Act in following terms:—

“[19]It is at this stage necessary to examine the implication of Sec. 9A of the I.D. Act, 1947. As hereinbefore pointed out, Sec. 9A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Sec 9A which has no relevance here. However, incidentally it may be pointed out that if the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules,

Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply no notice of change would be necessary before effecting a change. No attempt was made on behalf of the respondent-Corporation to urge that any of the aforementioned rules would govern the conditions of service of the workmen involved in the dispute. Now after introducing the direct payment system agreed to between the parties, if the Corporation or the employer wanted to introduce a change in respect of any of the matters set out in Fourth Schedule, it was obligatory to give a notice of change. Item 1 in the Fourth Schedule provides: 'wages, Including the period and mode of payment'. By canceling the direct payment system and introducing the contractor, both the wages and the mode of payment are being altered to the disadvantage of the workmen. Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Sec. 31(2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective.

20. Hon'ble Apex Court in **Workmen of Food Corporation of India vs. Food Corporation of India** supra has categorically held that if the direct employee is converted into a contract worker without notice, as contemplated under Section 9A of I.D. Act, the same would amount to illegal change. Section 9A of I.D. Act mandates issuance of prior notice if the change alters the conditions of service.

21. It has been held by the Hon'ble Apex Court in **Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Ltd. 2014 LawSuit (SC) 369, 2014 (11) SCC 85, 2014 AIR (SC) 2258,** as under:—

[23]. Very interestingly, the periods of service extends to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates 'unfair labour practice as defined under Section 2(ra) of the I.D. Act, which is not permissible in view of Sections 25T and 25U of the I.D. Act.

22. It is also important to take note of observations of Hon'ble Apex Court in **Secretary, Haryana State Electricity Board v/s Suresh 1999 LawSuit (SC) 380, 1999 AIR (SC) 1160,** to the following effect:—

“[17].....As a matter of fact law is well settled by this court and we need not dilate much by reason, therefore to the effect that the law courts exist for the society and in the event of there being a question posed in the matter of interpretation of a beneficial piece of legislation, question of interpreting the same with a narrow pedantic approach would not be justified. On the contrary, the widest possible meaning and amplitude ought to be offered to the expressions used as otherwise the entire legislation would loose its efficacy and contract labour would be left on the mercy of the intermediary.

[18]The democratic polity ought to survive with full vigour: socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises-is it permissible in the new millennium to decry the cry of the labour force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning

of Article 12 of the Constitution-the answer cannot possibly be in the affirmative-the law courts exist for the society and in the event law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought rise up to the occasion to meet and redress the expectation of the people.....

23. The respondent without any agreement with the petitioner to work on bill basis, has obtained work from him on bill basis for five years. Against which, the petitioner filed representation dated 19-6-2014 Mark-B to the Secretary Forests, which has not been denied, to provide appropriate seniority to the petitioner and also for issuance of regular muster roll. However, respondent did not pay heed to the same and continued to obtain work from petitioner on bill basis. This is against the spirit of the Act and respondent cannot be permitted to employ petitioner on bill basis for years together denying him benefits payable to permanent/regular workman. These breaks in service amount to unfair labour practice under Section 2(ra) specified in Clause 10 of Schedule Fifth of the Act. Clause 10 of the Schedule Fifth of the Act provides as under:—

“2(10) To employ workmen as “badlis”, casual or temporaries and to continue them as such for years, with the object to depriving them of the status and privileges of permanent workmen”.

24. The above unfair labour practice is prohibited by Section 25-T of the Act. Hence, respondent being the State under Article 12 of Constitution has to behave like a model employer and cannot indulge in unfair labour practice. The petitioner is a poor person as claimed by him. He cannot be deprived benevolent provisions of the Act as working on bill basis is nothing but refusal by the respondent to confer benefits payable to permanent/regular workman. Same also is certainly giving artificial/fictional breaks. Our Hon’ble High Court in recent judgment **Keshav Ram vs. State of H.P. & Others 2020 LawSuit (HP) 215** has held the following:

“Beli Ram vs. State of H.P. and others decided on 02-06-2009, in which this Court has held as under:—

“The Court is of the firm opinion that the respondents have given fictional/artificial breaks willfully to deprive him the status of regularization. The workman belongs to a lower strata of the society. His rights cannot be permitted to be trampled on the basis of arbitrary and whimsical action/decision. The workman may be appointed on daily wages, but he has absolute right to earn his livelihood within the constitutional framework. It will amount to unfair labour practice, if the respondent-State is permitted to give fictional breaks to the workman. The Court does not approve this practice. This practice has severe civil and evil consequences on the workman, who most of the time is at the mercy of the employer. He is required to complete 240 days in each year to earn him the benefit of regularization. He has been working continuously and has put in 5 years of service with effect from 1996 to 2000. In case the breaks are not condoned in the present case it will cause impediment in his way to seek regularization. The effect of fictional/artificial breaks given to the petitioner in the year 2001 would be that he would be required to wait for another eight to nine years to complete 240 days in each year. The services which he has rendered with effect from 1996 to 2000 would become otiose/ nugatory. The action of the respondent-State must be rationale and must conform to Article 14 and 16 of the Constitution of India. Ours is a welfare State.

Accordingly, the action of the respondents of giving the fictional breaks to the petitioner in the year 2001 is declared arbitrary. The breaks given to the petitioner in the months of January, February, March, April, May and June, 2001 are unreasonable and are accordingly condoned. It is declared that the petitioner has completed 240 days for all intents and purpose in the year 2001.”

9. Similarly, in CWP(T) No. 8143 of 2008, titled as Layak Ram vs. State of H.P. & Others, decided on 15-06-2009, this Court has held as under:—

"It is evident from reply filed by the respondents that the petitioner had completed more than 240 days each year with effect from 1996 till 2000. The petitioner had completed 219 ½ days in the year 2001. The plea raised by the respondent-department that the petitioner might have abandoned his job for few days every month cannot be accepted. The plea of abandonment is required to be proved like any other fact. A person belonging to lowest strata of the society cannot afford the luxury to remain absent. It cannot be presumed that the petitioner could remain absent knowing fully well the consequences. Rather, the respondents have not permitted him to complete 240 days in the year 2001 by giving him artificial breaks of few days every month. The petitioner has also given the details of days he was not permitted to work in the year 2002 as well. There is a pattern as per the rejoinder filed by the petitioner to the reply of the respondent-department reflecting that the respondents were bent upon not to permit the petitioner to complete 240 days every year. The completion of 240 days every twelve calendar months is important for the purpose of getting benefits under the provisions of Industrial Disputes Act, 1947 as well as to seen regularization after putting in requisite number of years."

25. It is also apposite to mention that the definition of continuous service in Section 25-B of the Act clearly specifies that workman shall be said to be in continuous service if he is for that period, in uninterrupted service, including service which may be interrupted on account of cessation of work which is not due to any fault on the part of the workman. Petitioner has claimed to be working throughout and respondent has alleged that he left the work of his own. It is observed that abandonment has not been proved by respondent. It is also not proved by respondent that Forest is a seasonal industry. The work is available throughout the year as other daily wage labourers are proved on record to be working as per seniority list Ex.PW2/O and the petitioner thus stands discriminated against the other workers in respect of whom seniority list was issued as on 31-3-2014. If there was no work available throughout the year how and why respondent issued tentative seniority list of daily labourers who are shown to have been engaged on different dates. Thus, pleas of abandonment, seasonal work and availability of work as well engaging petitioner on bill basis is camouflage, just to deprive petitioner of regular status of daily wager as well regularization benefit on completion of 240 days in calendar years and so the intermittent breaks are held artificial and fictional.

26. Thus, in view of the mandate of aforementioned law laid down by Hon'ble Apex Court and Hon'ble High Court the artificial breaks given in service during the period of alleged working on bill basis are held unjustified and illegal, liable to be set aside. RW1 has admitted that petitioner was re-engaged on 28-7-2012. In view of judgment of Hon'ble High Court of H.P. Ex.PW2/J petitioner has been engaged as fresh hand in preference to fresh recruits, as such he is entitled for service benefits only from the date of re-engagement *i.e.* 28-7-2012 and consequently in view of illegal artificial/fictional breaks given, he is entitled to be deemed in continuous service from 28-7-2012 till June, 2016 in terms of reference alongwith consequential benefit of seniority, except back wages.

27. Now coming to the question of final termination, it is observed that petitioner has claimed his final termination on 1-4-2016 which as per reference is June, 2016 but respondent has denied ever terminating the services of petitioner and specifically pleaded that petitioner worked intermittently on bill from April, 2013 till June, 2018. The plea of abandonment, as earlier observed, has not been proved by the respondent which as per the law is required to be proved like any other fact as held by Hon'ble High Court *ibid*. Further, the mandays chart Ex.PW2/F shows petitioner to have worked on bill basis till June, 2018. Thus, there is no final termination on

1-4-2016 or June, 2016 per reference and petitioner is deemed to have worked as daily wager continuously from 28-7-2012 to June, 2016 in terms of reference. Accordingly, Issue No. 1 decided in above terms.

Issue No. 2 :

28. As the fictional breaks given to petitioner from 28-7-2012 till June, 2016 are declared unjustified and illegal, petitioner is held entitled to consequential benefits of seniority from 28-7-2012, except back wages because petitioner has admittedly obtained wages/payments from respondent though on bill basis during said period. Issue No. 2 is accordingly decided.

Issue No. 3:

29. In view of positive findings on issues No.1 and 2, the claim petition is held maintainable. Even otherwise, respondent has not proved or established the petition to be not maintainable. Accordingly, issued No. 3 is answered in negative against the respondent.

Relief :

30. As a sequel to the findings of this Court on the issues above, the claim petition succeeds in part and is partly allowed. The claim of petitioner with regards final termination of his services *w.e.f.* 1-4-2016/June, 2016 is dismissed. However, it is held that artificial/fictional breaks in service provided to the petitioner by respondent from 28-7-2012 till June, 2016 are unjustified and illegal. The above period of fictional breaks is to be counted for the purpose of seniority and continuity in service of petitioner as daily waged worker, except back wages. His seniority shall be reckoned from the date of his engagement as fresh hand with the respondent on 28-7-2012. The parties are left to bear their costs. The reference is answered in above terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2022.

Sd/-
(ARVIND MALHOTRA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

ग्रामीण विकास विभाग

अधिसूचना

शिमला-02, 06 मई, 2022

संख्या आर.डी.(जी)1-4/2021.—हिमाचल प्रदेश के राज्यपाल, जिला मण्डी के विकास खण्ड, गोहर की ग्राम पंचायत झुंगी को विकास खण्ड निहरी में स्थानांतरित/सम्मिलित करने की स्वीकृति जनहित में निम्न प्रकार सहर्ष प्रदान करते हैं:—

विकास खण्ड का नाम	विकास खण्ड गोहर में कुल पंचायतों की संख्या	विकास खण्ड गोहर से विकास खण्ड निहरी में स्थानान्तरित की जाने वाली पंचायत की संख्या (नाम वार)	स्थानान्तरण उपरान्त विकास खण्ड गोहर में शेष पंचायतों की संख्या	प्रस्तावित विकास खण्ड का नाम	प्रस्तावित विकास खण्ड कार्यालय में कुल पंचायतों की संख्या	प्रस्तावित विकास खण्ड में स्थानान्तरित होने वाली पंचायत को मिलाने उपरान्त पंचायतों की संख्या
गोहर	41	1. झुंगी	40	निहरी	19	20

जब तक पंचायत समिति की 5 वर्ष की अवधि पूर्ण नहीं हो जाती तब तक विकास खण्ड निहरी में सम्मिलित होने वाली झुंगी ग्राम पंचायत के पंचायत समिति सदस्य, विकास खण्ड गोहर की पंचायत समिति के अंतर्गत ही रहेंगे।

आदेशानुसार,

निशा सिंह,
अतिरिक्त मुख्य सचिव (ग्रामीण विकास)।

राजस्व विभाग

अधिसूचना

शिमला-2, 04 मई, 2022

संख्या: राजस्व-डी(ए)1-3/2021-(बिलासपुर).—हिमाचल प्रदेश के राज्यपाल की यह राय है कि लोक हित में ऐसा करना आवश्यक और समीचीन है कि जिला बिलासपुर, हिमाचल प्रदेश में एक नई उप-तहसील हरलोग सृजित की जाए, ताकि नजदीक के गांवों के लोगों को बेहतर सेवाएं उपलब्ध करवाई जा सकें और जिससे उनको होने वाली किसी असुविधा से निवारित किया जा सके तथा बेहतर प्रशासनिक नियंत्रण हो सके;

अतः हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश भू-राजस्व अधिनियम, 1954 (1954 का अधिनियम संख्यांक 6) की धारा 6 और रजिस्ट्रीकरण अधिनियम, 1908 (1908 का अधिनियम संख्यांक 16) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, जिला बिलासपुर, हिमाचल प्रदेश में तहसील घुमारवीं के प्रशासनिक नियंत्रण के अधीन निम्न स्तम्भ संख्या 6 में दर्शाए गए पांच पटवार वृत्तों से गठित एक नई उप-तहसील हरलोग, जिसका मुख्यालय हरलोग में होगा, का तुरन्त प्रभाव से सृजन करते हैं:—

उप-तहसील का नाम	मुख्यालय	वर्तमानतः तहसील घुमारवीं में सम्मिलित पटवार वृत्तों के नाम	उप मण्डल का नाम	जिला	नई उप-तहसील में सम्मिलित किए जाने वाले पटवार वृत्त
1	2	3	4	5	6
हरलोग	हरलोग	अमरपुर बकरोआ सिल्ह	घुमारवीं	बिलासपुर	रोहिण मझवाड़ मल्यावर

घुमारवीं	तल्याणा
दाबला	हवाण
कोठी	
बाड़ी मझेड़ा	
सेऊ	
छत	
करलोटी	
कुठेडा	
कसोहल	
मैहरी काथला	
भुलस्वाएं	
तलवाड़ा	
रोहिण	
मझवाड़	
मल्यावर	
तल्याणा	
हवाण	

आदेश द्वारा,
 ओंकार चन्द शर्मा,
 प्रधान सचिव एवं वित्तायुक्त (राजस्व)।

[Authoritative English text of this Department Notification No. Rev-D(A)1-3/2021-(BLP) dated 04-05-2022 as required under clause (3) of Article 348 of the Constitution of India].

REVENUE DEPARTMENT

NOTIFICATION

Shimla-2, the 04th May, 2022

No. Rev-D(A) 1-3/2021-(BLP).—WHEREAS, the Governor of Himachal Pradesh is of the opinion that it is necessary and expedient in the public interest to create a new Sub-Tehsil Harlog in District Bilaspur, Himachal Pradesh, so as to provide better services to the people of nearby villages and to avoid any inconvenience being faced by them and to have better administrative control;

NOW, THEREFORE, in exercise of the powers conferred by section 6 of the Himachal Pradesh Land Revenue Act, 1954 (Act No. 6 of 1954) and Section 5 of the Registration Act, 1908 (Act No. 16 of 1908), the Governor of Himachal Pradesh is pleased to create a new Sub-Tehsil Harlog with its headquarter at Harlog under administrative control of Tehsil Ghumarwin in District Bilaspur, Himachal Pradesh, consisting of 5 Patwar Circles shown in column No.6 below, with immediate effect:—

Name of the Sub-Tehsil	Head Quarter	Name of Patwar Circles Presently included in Tehsil Ghumarwin	Name of Sub-Division	District	Patwar Circle to be included in new Sub-Tehsil
1	2	3	4	5	6
Harlog	Harlog	Amarpur Bakroa Silh Ghumarwin Dabla Kothi Badi Majhedwa Seu Chhat Karlotti Kuthera Kasohal Mehri Kathla Bhulswaen Talwara Rohin Majhwad Malyawar Talyana Hawan	Ghumarwin	Bilaspur	Rohin Majhwad Malyavar Talyana Hawaan

By order,
ONKAR CHAND SHARMA,
Principal Secretary-cum-FC (Revenue).

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 2nd May, 2022

No. Shram (A) 3-8/2021 (Awards) L.C. Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	Ref.165/2020	Sh. Jagir Singh	M/s Shivom Cotspin Ltd.	11-12-2021

By order,

R. D. DHIMAN, IAS
Addl. Chief Secretary (Lab. & Emp.).

BEFORE NATIONAL LOK ADALAT TO BE HELD ON 11-12-2021

11-12-2021.

Present: Shri Nitin Bagga, Advocate for petitioner.
Shri Subhash Chauhan, Manager for respondent.

With the little divulgence of Member of National Lok Adalat and with the intervention of this Court, the matter *i.e.* reference under section 10 (1) of the Industrial Disputes Act, 1947, received from the appropriate government *vide* notification No. 11-2/93 (Lab) ID/2021/Sirmaur/Jagbir Singh, dated 15th June, 2021, sent by the Labour Commissioner for adjudication, which was registered before this Court as Reference No. 165 of 2021, stood amicably resolved between the parties. It has been stated by Shri Subhash Chauhan, Manager of the respondent company that he has been duly authorized to give evidence or make any statement on behalf of the respondent management *vide* Board Resolution passed by the Board Management dated 28-2-2018. He further stated that the lis/industrial dispute between the workman and the management stood amicably resolved to which the worker has been paid full and final settlement. He has placed on record memorandum of settlement duly signed by both the parties as well as the receipt and full and final settlement Mark PA to Mark PD. Nothing remain survived in the present dispute as the present dispute stood amicably settled by way of full & final settlement. To this effect, his statement recorded separately.

Vide separate statement Shri Nitin Bagga, Advocate for the petitioner has stated that the petitioner has duly authorized him to give any statement on his behalf before this Court. The matter between the petitioner and the respondent management stood amicably settled by way of memorandum of settlement as well as full and final settlement receipt, statement of account, placed on record.

Since, the matter stood amicably settled between the parties by way of memorandum of statement under section 18 of the Industrial Disputes Act, therefore, nothing survive in the present reference petition. The reference received from the appropriate government is answered accordingly. The statements of the parties and memorandum of settlement (Mark PA), receipt (Mark PB), Full & final settlement receipt (Mark PC) and Statement report (Mark PD) shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for its publication in the official gazette. File, after competing be consigned to records.

Announced:
11-12-2021.

(VINOD SHARMA)
Member.

(RAJESH TOMAR)
Chairman,
National Lok Adalat.

**GOVERNOR'S SECRETARIAT HIMACHAL PRADESH
RAJ BHAVAN, SHIMLA**

ORDER

Dated, the 6th May, 2022

No. 45-2/85-GS.—In exercise of powers conferred upon me by sub-section (1) of Section 24 of the Himachal Pradesh Universities of Agriculture, Horticulture and Forestry Act, 1986, I, Rajendra Vishwanath Arlekar, Governor (Chancellor), Dr. Y. S. Parmar, University of Horticulture & Forestry, Nauni, Solan hereby appoint Dr. Rajeshwar Singh Chandel, Executive Director, Prakritik Kheti Khushhal Kisan Yojana, Govt. of Himachal Pradesh, Shimla-5 as Vice-Chancellor, Dr. Y. S. Parmar, UHF, Nauni, Solan for a term of three years with effect from the date he assumes the charge of the office of Vice-Chancellor in UHF Nauni, Solan. The emoluments and other conditions of service of the Vice-Chancellor shall be such as prescribed or determined by the State Government.

By order,

RAJENDRA VISHWANATH ARLEKAR,
Governor (Chancellor),
Dr. Y.S. Parmar, University of
Horticulture & Forestry, Nauni, Solan (H.P.).

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, मझीण, जिला कांगड़ा, हिमाचल प्रदेश

मुकदमा तकसीम हुक्मन मिसल नं० 13/NT/2019

तारीख पेशी 10-05-2022

श्रीमती कमला देवी पुत्री प्रभु राम, हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा बलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी प्राथिया।

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1. यशपाल पुत्र राजिंदर कुमार, 2. स्वरूप कृष्ण पुत्र अमर चन्द, 3. बर्फी मृतक वारसान a. विनोद कुमार पुत्र मेहर चन्द, b. रीता कुमारी पुत्री मेहर चन्द, c. रीमा कुमारी पुत्री मेहर चन्द, d. मीमा कुमारी पुत्री मेहर चन्द, e. व्यासा देवी पत्नी स्व० श्री मेहर चन्द, f. विजय कुमार पुत्र धर्म चन्द, g. सपना कुमारी पुत्री धर्म चन्द, h. शालू पुत्री धर्म चन्द, i. ज्योति धर्म पाल, j. कान्ता देवी पत्नी स्व० श्री धर्म चन्द, k. प्रशोतम चन्द पुत्र कर्म चन्द, l. माया देवी पुत्री बर्फी, 4. शक्ति चन्द मृतक वारसान, a. अभिमानु धीमान पुत्र पूर्ण चन्द, b. नितिन धीमान पुत्र पूर्ण चन्द, 5. निहातु देवी पुत्री रामदिता, 6. सुखां पुत्री रामदिता, 7. ओंकार चन्द पुत्र जोहंडा राम, 8. अशोक कुमार पुत्र जोहंडाराम, 9. सोमा देवी पुत्री जोहंडाराम, 10. चंचला देवी पुत्री जगदीश चन्द, 11. मीना कुमारी पुत्री जगदीश चन्द, 12. बबली देवी पुत्री जगदीश चन्द, 13. निर्मला देवी पुत्री जगदीश चन्द, 14. सीमा देवी पुत्री जगदीश चन्द, 15. कांता देवी पत्नी स्व० जगदीश चन्द, 16. रुमाल देवी पुत्री सुखिया, 17. अजित सिंह पुत्र बिधु राम, 18. विशाल कुमार पुत्र हरनाम सिंह, 19. अभिषेक कुमार पुत्र हरनाम सिंह, 20. सुनीता देवी पत्नी स्व० श्री हरनाम सिंह, 21. नेक राम पुत्र भगत राम, 22. मनसा देवी पत्नी स्व० भगत राम, 23. बाबू राम पुत्र मुंशी, 24. प्यार चन्द पुत्र मुंशी, 25. सुभाष चन्द पुत्र मुंशी, 26. कांता देवी पुत्री मुंशी, 27. सुमना देवी पुत्री मुंशी, 28. रतनी देवी पत्नी स्व० श्री मुंशी, 29. सुरमा मृतक वारसान, a. रमेश कुमार पुत्र सुरमा, b. मोहिन्दर सिंह पुत्र सुरमा, c. किशो देवी पत्नी स्व० श्री सुरमा, 30. जैनता पुत्र खडकू, 31. दीपक कुमार, 32. वकील

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विषय:-हि०प्र०भू० राजस्व अधिनियम, 1954 की जेर धारा 123 के अन्तर्गत भूमि खेवट नं० 70, खतौनी नं० 309, ता 331, खसरा कित्ता 188, रकबा तादादी 09-90-37 हैक्ट, वाक्या महाल भटावां, मौजा सिहोरवाला, उप-तहसील मझीण, जिला कांगड़ा (हि०प्र०) के भूमि विभाजन हेतु प्रार्थना-पत्र।

श्रीमती कमला देवी पुत्री प्रभु राम हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी ने इस अदालत में खाता नं० 70 का दावा भूमि तकसीम हुक्मन दायर कर रखा है। जिसमें प्रतिवादीगण नं० 40, 42, 63, 68, 69 व 65, 67 के इलावा अन्य प्रतिवादीगण पेशी पर हाजर अदालत न हुये और न ही किसी कारण से हाजर न हो पाने बारे सूचना उपलब्ध करवाई। उक्त मिसल में प्रतिवादीगणों की संख्या भी अधिक होने के कारण और कुछ प्रतिवादीगणों का सही पता न होने के कारण साधारण तरीके से समन तामील न हो पा रहे हैं कुछ प्रतिवादीगण ऐसे भी हैं जिनकी मृत्यु हो चुकी है परन्तु इन्तकाल दर्ज न हुआ है। वादी कौंसिल ने भी सही पता व वारसान की सूची उपलब्ध करवाने में असमर्थता जताई है। अतः न्यायालय को यह विश्वास हो चुका है कि उपरोक्त प्रतिवादीगणों की तामील साधारण तरीके से होना संभव न है। लेकिन 'सुने जाने में मौके' के सिद्धान्त को ध्यान में रखते हुये उक्त सभी प्रतिवादीगणों को इस इशतहार द्वारा सूचित किया जाता है कि वे उक्त मुकद्दमा की पैरवी हेतु अदालतन या वकालतन तारीख पेशी 10-05-2022 को प्रातः 11.00 बजे हाजिर अदालत होकर पैरवी मुकद्दमा करें। गैर-हाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिया जाएगा व बाद तारीख पेशी किसी भी प्रकार का उजर या एतराज स्वीकार न होगा।

आज दिनांक 31-03-2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
मझीण, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, मझीण, जिला कांगड़ा, हिमाचल प्रदेश

मुकद्दमा तकसीम हुक्मन मिसल नं० 12/NT/2019

तारीख पेशी 10-05-2022

श्रीमती कमला देवी पुत्री प्रभु राम हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी प्रार्थिया।

बनाम

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विषय:—हि०प्र०भू० राजस्व अधिनियम, 1954 की जेर धारा 123 के अन्तर्गत भूमि खेवट नं० 71, खतौनी नं० 332, ता 353, खसरा कित्ता 67, रकबा तादादी 05-53-07 हैक्ट, वाक्या महाल भटावां, मौजा सिहोरवाला, उप-तहसील मझीण, जिला कांगड़ा (हि०प्र०) के भूमि विभाजन हेतु प्रार्थना-पत्र।

श्रीमती कमला देवी पुत्री प्रभु राम हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी ने इस अदालत में खाता नं० 71 का दावा भूमि तकसीम हुक्मन दायर कर रखा है। जिसमें प्रतिवादीगण नं० 40, 42, 63, 68, 69 व 65, 67 के इलावा अन्य प्रतिवादीगण पेशी पर हाजर अदालत न हुये और न ही किसी कारण से हाजर न हो पाने बारे सूचना उपलब्ध करवाई। उक्त मिसल में प्रतिवादीगणों की संख्या भी अधिक होने के कारण और कुछ प्रतिवादीगणों का सही पता न होने के कारण साधारण तरीके से समन तामील न हो पा रहे हैं कुछ प्रतिवादीगण ऐसे भी हैं जिनकी मृत्यु हो चुकी है परन्तु इन्तकाल दर्ज न हुआ है। वादी कौंसिल ने भी सही पता व वारसान की सूची उपलब्ध करवाने में असमर्थता जताई है। अतः न्यायालय को यह विश्वास हो चुका है कि उपरोक्त प्रतिवादीगणों की तामील साधारण तरीके से होना संभव न है। लेकिन 'सुने जाने में मौके' के सिद्धान्त को ध्यान में रखते हुये उक्त सभी प्रतिवादीगणों को इस इशतहार द्वारा सूचित किया जाता है कि वे उक्त मुकद्दमा की पैरवी हेतु असालतन या वकालतन तारीख पेशी 10-05-2022 को प्रातः 11.00 बजे हाजिर अदालत होकर पैरवी मुकद्दमा करें। गैर-हाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिया जाएगा व बाद तारीख पेशी किसी भी प्रकार का उजर या एतराज स्वीकार न होगा।

आज दिनांक 31-03-2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
मझीण, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, मझीण, जिला कांगड़ा, हिमाचल प्रदेश

मुकद्दमा तकसीम हुक्मन मिसल नं० 11/NT/2019

तारीख पेशी 10-05-2022

श्रीमती कमला देवी पुत्री प्रभु राम हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी प्रार्थिया।

बनाम

1. यशपाल पुत्र राजिंदर कुमार, 2. स्वरूप कृष्ण पुत्र अमर चन्द, 3. बर्फी मृतक वारसान a. विनोद कुमार पुत्र मेहर चन्द, b. रीता कुमारी पुत्री मेहर चन्द, c. रीमा कुमारी पुत्री मेहर चन्द, d. मीमा कुमारी पुत्री मेहर चन्द, e. व्यासा देवी पत्नी स्व० श्री मेहर चन्द, f. विजय कुमार पुत्र धर्म चन्द, g. सपना कुमारी पुत्री धर्म चन्द, h. शालू पुत्री धर्म चन्द, i. ज्योति धर्म पाल, j. कान्ता देवी पत्नी स्व० श्री धर्म चन्द, k. प्रशोतम चन्द पुत्र कर्म चन्द, l. माया देवी पुत्री बर्फी, 4. शक्ति चन्द मृतक वारसान, a. अभिमानु धीमान पुत्र पूर्ण चन्द, b. नितिन धीमान पुत्र पूर्ण चन्द, 5. निहातु देवी पुत्री रामदिता, 6. सुखां पुत्री रामदिता, 7. ओंकार चन्द पुत्र जोहंडा राम, 8. अशोक कुमार पुत्र जोहंडाराम, 9. सोमा देवी पुत्री जोहंडाराम, 10. चंचला देवी पुत्री जगदीश चन्द, 11. मीना कुमारी पुत्री जगदीश चन्द, 12. बबली देवी पुत्री जगदीश चन्द, 13. निर्मला देवी पुत्री जगदीश चन्द, 14. सीमा देवी पुत्री जगदीश चन्द, 15. कांता देवी पत्नी स्व० जगदीश चन्द, 16. रुमाल देवी पुत्री सुखिया, 17. अजित सिंह पुत्र बिधु राम, 18. विशाल कुमार पुत्र हरनाम सिंह, 19. अभिषेक कुमार पुत्र हरनाम सिंह, 20. सुनीता देवी पत्नी स्व० श्री हरनाम सिंह, 21. नेक राम पुत्र भगत राम, 22. मनसा देवी पत्नी स्व० भगत राम, 23. बाबू राम पुत्र मुंशी, 24. प्यार चन्द पुत्र मुंशी, 25. सुभाष चन्द पुत्र मुंशी, 26. कांता देवी पुत्री मुंशी, 27. सुमना देवी पुत्री मुंशी, 28. रतनी देवी पत्नी स्व० श्री मुंशी, 29. सुरमा मृतक वारसान, a. रमेश कुमार पुत्र सुरमा, b. मोहिन्दर सिंह पुत्र सुरमा, c. किशो देवी पत्नी स्व० श्री सुरमा, 30. जैनता पुत्र खडकू, 31. दीपक कुमार, 32. वकील चन्द पुत्र वशाखी, 33. दीपक पुत्र विधि चन्द, 34. कलां देवी पुत्री जेजू, 35. पुण्या देवी पुत्री जेजू, 36. सिमरु पुत्र परसी, 37. चिमन लाल पुत्र चौधरी, 38. बनतो देवी पुत्री चौधरी, 39. तिलक राज पुत्र भूरु राम, 40. भाग सिंह पुत्र भूरु राम, 41. सोम नाथ पुत्र भूरु राम, 42. रघुनाथ पुत्र भूरु राम, 43. मनोहर लाल पुत्र भूरु राम, 44. रोशनी देवी पुत्री भूरु राम, 45. जगतम्बा देवी पुत्री भूरु राम, 46. रुकमणी देवी पत्नी स्व० श्री भूरु राम, 47. ब्रह्मी देवी पुत्री मथरा दास, 48. केसरी देवी पुत्री मथरा दास, 49. दीप चन्द पुत्र साली राम, 50. मदन लाल पुत्र साली राम, 51. अनिल कुमार पुत्र साली राम, 52. निर्मला देवी पुत्री साली राम, 53. सत्य देवी पत्नी स्व० श्री साली राम, 54. अजय कुमार पुत्र दुलो राम, 55. कांशी राम पुत्र वलिया, 56. मैना देवी पुत्री वलिया, 57. सुलोचना देवी पुत्री वलिया, 58. भुकड़ी देवी पुत्री वलिया, 59. सुहागु देवी मृतक बजरिया वारसान 54 ता 58. 60. रीता कुमारी पुत्री तुलसी राम, 61. उर्मिला देवी पत्नी स्व० श्री तुलसी राम, 62. बख्सी राम पुत्र गोविंद, 63. अतुल कुमार, 64. हेम राज पुत्र हरी राम, 65. महिन्दर सिंह पुत्र देश राज, 66. रवि कुमार पुत्र देश राज, 67. कुशला देवी पत्नी स्व० श्री देश राज, 68. प्रदीप कुमार पुत्र निहालु, 69. राम कृष्ण पुत्र निहालु, 70. सेवतु देवी पुत्री निहालु, 71. राज दुलारी पुत्री नामालूम, 72. प्रेम लता पुत्री नामालूम, 73. राजेश पुत्र अमर चन्द, 74. राकेश कुमार पुत्र अमर चन्द, 75. नीना कुमारी पुत्री अमर चन्द, 76. सरोज कुमारी पत्नी स्व० श्री अमर चन्द, 77. रतनी देवी पुत्री प्रभू राम, 78. बलदेव सिंह पुत्र सरवण, 79. नेक राम पुत्र सरवण, 80. जोगिन्दर सिंह पुत्र सरवण, 81. माया देवी पुत्री सरवण, 82. रेशमा देवी पुत्री सरवण, 83. सरस्वती देवी पत्नी स्व० श्री सरवण, 84. जै राम पुत्र खजाना, 85. रोशन लाल पुत्र वंशी, 86. मोती राम पुत्र वंशी, 87. दुनी चन्द पुत्र वंशी, 88. अमर चन्द पुत्र वंशी, 89. अमीं चन्द पुत्र वंशी, 90. देवकु पुत्री वंशी, 91. रेशां पुत्री वंशी, 92. सितू पुत्र वीरु, 93. शाली पुत्र बूटा, 94. मेहर चन्द पुत्र किरपा राम, 95. धर्म चन्द पुत्र किरपा राम, 96. प्यार चन्द पुत्र किरपा राम, 97. जय लाल पुत्र किरपा राम, 98. ज्ञान चन्द पुत्र किरपा राम, 99. बिहारी लाल पुत्र किरपा राम, 100. प्रशोतम पुत्र किरपा राम, 101. रोशनी देवी पुत्री किरपा राम, 102. जयबन्ती पत्नी स्व० श्री किरपा राम, 103. शौंकी राम पुत्र महली, 104. सुखिया पुत्र महली, 105. मनभरी पुत्री महली, 106. केसरी पुत्री महली, 107. प्रसिन्दा पुत्र लैहणु, 108. जौहंडू पुत्र सुन्दर, 109. जै राम पुत्र सुन्दर, 110. लालमन पुत्र गंगा, 111. मदन लाल पुत्र हीरु राम, 112. सोहन लाल पुत्र हीरु राम, 113. रमेश चन्द पुत्र हीरु राम, 114. बीना कुमारी पुत्री हीरु राम, 115. विधा देवी पत्नी स्व० श्री हीरु राम, 116. पूर्ण चन्द पुत्र जगो, 117. श्रीमती गुड्डू पुत्री जगो, 118. कुमारी गुड्डू पुत्री जगो, 119. जानकी दास पुत्र सुन्का, 120. वदरी प्रसाद पुत्र नैरण, 121. मथुरा प्रसाद पुत्र नैरण, 122. अजुध्या दास पुत्र नैरण, 123. राधा पुत्र देवी प्रसाद, 124. अमर नाथ पुत्र देवी प्रसाद, 125. वरफी राम पुत्र जैसी, 126. राज कुमार मृतक वारसान a. राकेश कुमार, b. पंकज कुमार, 127. विक्रम सिंह पुत्र जैसी, 128. राजीव सिंह पुत्र हरी सिंह, 129. सुनीता देवी पुत्री हरी सिंह, 130. मीरां देवी पुत्री हरी सिंह, 131. प्रकाश कौर पत्नी स्व० श्री हरी सिंह, 132. ठाकर दास पुत्र प्रभदयाल समस्त वासी महाल भटावां, मौजा सिहोरवाला, उप-तहसील मझीण, जिला कांगड़ा (हि०प्र०)।

विषय:-हि०प्र०भू० राजस्व अधिनियम, 1954 की जेर धारा 123 के अन्तर्गत भूमि खेवट नं० 72, खतौनी नं० 354, ता 372, खसरा कित्ता 53, रकबा तादादी 08-51-86 हैक्ट, वाक्या महाल भटावां, मौजा सिहोरवाला, उप-तहसील मझीण, जिला कांगड़ा (हि०प्र०) के भूमि विभाजन हेतु प्रार्थना-पत्र।

श्रीमती कमला देवी पुत्री प्रभु राम हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी ने इस अदालत में खाता नं० 72 का दावा भूमि तकसीम हुक्मन दायर कर रखा है। जिसमें प्रतिवादीगण नं० 40, 42, 63, 68, 69, व 65, 67 के इलावा अन्य प्रतिवादीगण पेशी पर हाजर अदालत न हुये और न ही किसी कारण से हाजर न हो पाने बारे सूचना उपलब्ध करवाई। उक्त मिसल में प्रतिवादीगणों की संख्या भी अधिक होने के कारण और कुछ प्रतिवादीगणों का सही पता न होने के कारण साधारण तरीके से समन तामील न हो पा रहे हैं कुछ प्रतिवादीगण ऐसे भी हैं जिनकी मृत्यु हो चुकी है परन्तु इन्तकाल दर्ज न हुआ है। वादी कौंसिल ने भी सही पता व वारसान की सूची उपलब्ध करवाने में असमर्थता जताई है। अतः न्यायालय को यह विश्वास हो चुका है कि उपरोक्त प्रतिवादीगणों की तामील साधारण तरीके से होना संभव न है। लेकिन 'सुने जाने में मौके' के सिद्धान्त को ध्यान में रखते हुये उक्त सभी प्रतिवादीगणों को इस इशतहार द्वारा सूचित किया जाता है कि वे मुकद्दमा की पैरवी हेतु असालतन या वकालतन तारीख पेशी 10-05-2022 को प्रातः 11.00 बजे हाजिर अदालत होकर पैरवी मुकद्दमा करें। गैर-हाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिया जाएगा व बाद तारीख पेशी किसी भी प्रकार का उजर या एतराज स्वीकार न होगा।

आज दिनांक 31-03-2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
मझीण, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, मझीण, जिला कांगड़ा, हिमाचल प्रदेश

मुकद्दमा तकसीम हुक्मन मिसल नं० 07/NT/2019

तारीख पेशी 10-05-2022

श्रीमती कमला देवी पुत्री प्रभु राम, हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी प्राथिया।

बनाम

1. महिन्दर सिंह पुत्र देश राज, 2. रवि कुमार पुत्र देश राज, 3. कुशला देवी पत्नी स्व० श्री देश राज 4. हेम राज पुत्र हरी राम, 5. अतुल कुमार पुत्र किशन चन्द, 6. प्रदीप कुमार पुत्र निहालु, 7. राम कृष्ण पुत्र निहालु, 8. सेवतु देवी पुत्री निहालु, 9. रतनी देवी पुत्री प्रभु राम समस्त वासी महाल भटावां, मौजा सिहोरवाला, उप-तहसील मझीण, जिला कांगड़ा (हि०प्र०)। प्रतिवादीगण।

विषय:—हि०प्र०भू० राजस्व अधिनियम, 1954 की जेर धारा 123 के अन्तर्गत भूमि खेवट नं० 53, खतौनी नं० 263, ता 265, खसरा कित्ता 24, रकबा तादादी 00-76-97 हैक्ट०, वाक्या महाल भटावां, मौजा सिहोरवाला, उप-तहसील मझीण, जिला कांगड़ा (हि०प्र) के भूमि विभाजन हेतु प्रार्थना-पत्र।

श्रीमती कमला देवी पुत्री प्रभु राम हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी ने इस अदालत में खाता नं० 53 का दावा भूमि तकसीम हुक्मन दायर कर रखा है। जिसमें प्रतिवादीगण नं० 02, 04, 08, 09 को साधारण तरीके से समन तामील न हो पा रहे हैं और न ही प्राथिया के कौंसिल को इनका सही पता मालूम है। प्राथिया कौंसिल ने इनका सही पता प्राप्त होने बारे अपनी असमर्थता जताई है। अतः न्यायालय को यह विश्वास हो चुका है कि उपरोक्त प्रतिवादीगणों की तामील साधारण तरीके से होना संभव न है। 'लेकिन सुने जाने में मौके' के सिद्धान्त को ध्यान में रखते हुये उक्त सभी प्रतिवादीगणों को इस इशतहार द्वारा सूचित किया जाता है कि वे मुकद्दमा की पैरवी हेतु असालतन या वकालतन तारीख पेशी 10-05-2022 को प्रातः 11.00 बजे हाजिर अदालत होकर पैरवी मुकद्दमा करें। गैर-हाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई

जाकर आगामी आदेश पारित कर दिया जाएगा व बाद तारीख पेशी किसी भी प्रकार का उजर या एतराज स्वीकार न होगा।

आज दिनांक 31-03-2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
मझीण, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, मझीण, जिला कांगड़ा, हिमाचल प्रदेश

मुकद्दमा तकसीम हुक्मन मिसल नं० 08/NT/2019

तारीख पेशी 10-05-2022

श्रीमती कमला देवी पुत्री प्रभु राम हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी प्रार्थिया।

बनाम

1. तिलक राज पुत्र भुरु राम, 2. भाग सिंह पुत्र भुरु राम, 3. सोम नाथ पुत्र भुरु राम, 4. रघु नाथ पुत्र भुरु राम, 5. मनोहर लाल पुत्र भुरु राम, 6. रोशनी देवी पुत्री भुरु राम, 7. जगतम्बा देवी पुत्री भुरु राम, 8. रुकमणी देवी पत्नी स्व० श्री भुरु राम, 9. ब्रह्मी देवी पुत्री मथरा दास, 10. केसरी देवी पुत्री मथरा दास, 11. दीप चन्द पुत्र साली राम, 12. मदन लाल पुत्र साली राम, 13. अनिल कुमार पुत्र साली राम, 14. निर्मला देवी पुत्री साली राम, 15. सत्या देवी पत्नी स्व० श्री साली राम, 16. अजय कुमार पुत्र दूलो राम, 17. कांशी राम पुत्र वलिया, 18. मैना देवी पुत्री वलिया, 19. सुलोचना देवी पुत्री वलिया, 20. भुकड़ी देवी पुत्री वलिया, 21. सुहाग देवी मृतक वजिरया वारसान 16 ता 20, 22. रीता कुमारी पुत्री तुलसी राम, 23. उर्मिला देवी पत्नी स्व० श्री तुलसी राम, 24. वख्सी राम पुत्र गोबिंद, 25. अतुल कुमार पुत्र किशन चन्द, 26. हेम राज पुत्र हरी राम, 27. महिंदर सिंह पुत्र देश राज, 28. रवि कुमार पुत्र देश राज, 29. कुशला देवी पत्नी स्व० श्री देश राज, 30. प्रदीप कुमार पुत्र निहालु, 31. राम कृष्ण पुत्र निहालु, 32. सेवतु देवी पुत्री निहालु, 33. रतनी देवी पुत्री प्रभु राम, समस्त वासी महाल भटावां, मौजा सिहोरवाला, उप-तहसील मझीण, जिला कांगड़ा (हि०प्र०)।

प्रतिवादीगण।

विषय.—हि०प्र०भू० राजस्व अधिनियम, 1954 की जेर धारा 123 के अन्तर्गत भूमि खेवट नं० 54, खतौनी नं० 266, ता 271, खसरा कित्ता 28, रकबा तादादी 01-66-05 हैक्ट०, वाक्या महाल भटावां, मौजा सिहोरवाला, उप-तहसील मझीण, जिला कांगड़ा (हि०प्र०) के भूमि विभाजन हेतु प्रार्थना-पत्र।

श्रीमती कमला देवी पुत्री प्रभु राम हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी ने इस अदालत में खाता नं० 54 का दावा भूमि तकसीम हुक्मन दायर कर रखा है। जिसमें प्रतिवादीगण नं० 02, 04, 25, 30, 31 व 27, 28 के इलावा अन्य प्रतिवादीगण पेशी पर हाजर अदालत न हुये और न ही किसी कारण से हाजर न हो पाने बारे कोई सूचना उपलब्ध करवाई। उक्त मिसल में प्रतिवादीगणों की संख्या भी अधिक होने के कारण और कुछ प्रतिवादीगणों का सही पता न होने के कारण साधारण तरीके से समन तामील न हो पा रहे हैं कुछ प्रतिवादीगण ऐसे भी हैं जिनकी मृत्यु हो चुकी है परन्तु इन्तकाल दर्ज न हुआ है। वादी कौंसिल ने भी सही पता व वारसान की सूची उपलब्ध करवाने में असमर्थता जताई है। अतः न्यायालय को यह विश्वास हो चुका है कि उपरोक्त प्रतिवादीगणों की तामील साधारण तरीके से होना संभव न है। लेकिन 'सुने जाने में मौके' के सिद्धान्त को ध्यान में रखते हुये उक्त सभी प्रतिवादीगणों को इस इश्तहार द्वारा सूचित किया जाता है कि वे उक्त मुकद्दमा की पैरवी हेतु अदालतन या वकालतन तारीख पेशी 10-05-2022 को प्रातः 11.00 बजे हाजिर अदालत होकर पैरवी मुकद्दमा करें। गैर-हाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिया जाएगा व बाद तारीख पेशी किसी भी प्रकार का उजर या एतराज स्वीकार न होगा।

आज दिनांक 31-03-2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
मझीण, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, मझीण, जिला कांगड़ा, हिमाचल प्रदेश

मुकद्दमा तकसीम हुक्मन मिसल नं० 09/NT/2019

तारीख पेशी 10-05-2022

श्रीमती कमला देवी पुत्री प्रभु राम हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी प्राथिया।

बनाम

1. महिन्दर सिंह पुत्र देश राज, 2. हेम राज पुत्र हरी राम, 3. अतुल कुमार पुत्र किशन चन्द, 4. प्रदीप कुमार पुत्र निहालु, 5. राम कृष्ण पुत्र निहालु, 6. सेवतु देवी पुत्री निहालु, 7. रतनी देवी पुत्री प्रभु राम, समस्त वासी महाल भटावां, मौजा सिहोरवाला, उप-तहसील मझीण, जिला कांगड़ा (हि०प्र०)। प्रतिवादीगण।

विषय.—हि०प्र०भू० राजस्व अधिनियम, 1954 की जेर धारा 123 के अन्तर्गत भूमि खेवट नं० 51, खतौनी नं० 258, खसरा कित्ता 04, रकबा तादादी 00-09-61 हैक्ट०, वाक्या महाल भटावां, मौजा सिहोरवाला, उप-तहसील मझीण, जिला कांगड़ा (हि०प्र०) के भूमि विभाजन हेतु प्रार्थना-पत्र।

श्रीमती कमला देवी पुत्री प्रभु राम हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी ने इस अदालत में खाता नं० 51 का दावा भूमि तकसीम हुक्मन दायर कर रखा है। जिसमें प्रतिवादीगण नं० 02, 06, 07 को साधारण तरीके से समन तामील न हो पा रहे हैं और न ही प्राथिया के कौंसिल को इनका सही पता मालूम है। प्राथिया कौंसिल ने इनका सही पता प्राप्त होने बारे अपनी असमर्थता जताई है। अतः न्यायालय को यह विश्वास हो चुका है कि उपरोक्त प्रतिवादीगणों की तामील साधारण तरीके से होना संभव न है। 'लेकिन सुने जाने में मौके' के सिद्धान्त को ध्यान में रखते हुये उक्त सभी प्रतिवादीगणों को इस इशतहार द्वारा सूचित किया जाता है कि वे उक्त मुकद्दमा की पैरवी हेतु असालतन या वकालतन तारीख पेशी 10-05-2022 को प्रातः 11.00 बजे हाजिर अदालत होकर पैरवी मुकद्दमा करें। गैर-हाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिया जाएगा व बाद तारीख पेशी किसी भी प्रकार का उजर या एतराज स्वीकार न होगा।

आज दिनांक 31-03-2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
मझीण, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, मझीण, जिला कांगड़ा, हिमाचल प्रदेश

मुकद्दमा तकसीम हुक्मन मिसल नं० 10/NT/2019

तारीख पेशी 10-05-2022

श्रीमती कमला देवी पुत्री प्रभु राम हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी प्रार्थिया।

बनाम

1. अतुल कुमार पुत्र किशन चन्द, 2. हेम राज पुत्र हरी राम, 3. महिन्दर सिंह पुत्र देश राज, 4. रवि कुमार पुत्र देश राज, 5. कुशला देवी पत्नी स्व० श्री देश राज, 6. प्रदीप कुमार पुत्र निहालु, 7. राम कृष्ण पुत्र निहालु, 8. सेवतु देवी पुत्री निहालु, 9. रतनी देवी पुत्री प्रभु राम, समस्त वासी महाल भटावां, मौजा सिहोरवाला, उप-तहसील मझीण, जिला कांगड़ा (हि० प्र०)। प्रतिवादीगण।

विषय.—हि० प्र० भू० राजस्व अधिनियम, 1954 की जेर धारा 123 के अन्तर्गत भूमि खेवट नं० 52, खतौनी नं० 259 ता 262, खसरा कित्ता 29, रकबा तादादी 00—28—86 हैक्ट, वाक्या महाल भटावां, मौजा सिहोरवाला, उप-तहसील मझीण, जिला कांगड़ा (हि० प्र०) के भूमि विभाजन हेतु प्रार्थना-पत्र।

श्रीमती कमला देवी पुत्री प्रभु राम हाल पत्नी जैसी राम, निवासी महाल पुरन्डयाल, मौजा वलडूहक, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश बजरिया कौंसिल पंकज चौधरी ने इस अदालत में खाता नं० 52 का दावा भूमि तकसीम हुक्मन दायर कर रखा है। जिसमें प्रतिवादीगण नं० 02, 04, 08, 09 को साधारण तरीके से समन तामील न हो पा रहे हैं और न ही प्रार्थिया के कौंसिल को इनका सही पता मालूम है। प्रार्थिया कौंसिल ने इनका सही पता प्राप्त होने बारे अपनी असमर्थता जताई है। अतः न्यायालय को यह विश्वास हो चुका है कि उपरोक्त प्रतिवादीगणों की तामील साधारण तरीके से होना संभव न है। लेकिन 'सुने जाने में मौक' के सिद्धान्त को ध्यान में रखते हुये उक्त सभी प्रतिवादीगणों को इस इश्तहार द्वारा सूचित किया जाता है कि वे मुकद्दमा की पैरवी हेतु असालतन या वकालतन तारीख पेशी 10-05-2022 को प्रातः 11.00 बजे हाजिर अदालत होकर पैरवी मुकद्दमा करें। गैर-हाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिया जाएगा व बाद तारीख पेशी किसी भी प्रकार का उजर या एतराज स्वीकार न होगा।

आज दिनांक 31-03-2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
मझीण, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, डाडासीबा, जिला कांगड़ा (हि० प्र०)

मु० नं० : 19/2020/एन०टी०

तारीख दायरा 03-02-2020

तारीख पेशी 11-05-2022

1. श्री दलीप चन्द पुत्र बाबू, वासी महाल गुरनवाड, तहसील डाडासीबा, जिला कांगड़ा (हि० प्र०)

प्रार्थी।

बनाम

1. कुशल देव पुत्र दसौन्धी राम, 2. राजेश कुमार, 3. मुकेश कुमार, 4. नरेश कुमार पुत्रान सुभाष चंद व 5. अलका पुत्र, 6. मोनिका पुत्रियां व 7. रामेश्वरी देवी पत्नी स्व० श्री सुभाष चंद, 8. विमल कुमार पुत्र जगदीश राम, 9. रवि प्रकाश, 10. नरेश कुमार पुत्रान नन्द लाल, 11. सुनीता रानी पत्नी स्व० श्री ओम प्रकाश, 12. अशोक कुमार, 13. सुर्जन कुमार पुत्रान हरू, 14. सत्या देवी पत्नी प्रकाश चंद 15. भजन दास पुत्र भागु, 16. ब्यासा देवी पत्नी स्व० श्री भागु, 17. कर्मो देवी पुत्री रतन चंद, 18. महिन्द सिंह, 19. संतोष कुमार, 20.

जैसी राम, 21. सुरम सिंह पुत्रान जुल्फी राम, 22. मीना कुमारी पत्नी दलीप चंद, समस्त वासीगण महाल गुरनवाड, तहसील डाडासीबा, जिला कांगड़ा (हि0 प्र0) प्रत्यार्थीगण।

उनवान मुकद्दमा.—प्रार्थना—पत्र तकसीम भूमि खेवट नं0 78, खतौनी नं0 105, खसरा कित्ता 01, रकबा तादादी 0—19—47 है0 वाक्या महाल डाडासीबा, तहसील डाडासीबा, जिला कांगड़ा (हि0 प्र0)। अनुसार जमाबन्दी वर्ष 2014—15.

उपरोक्त प्रत्यार्थीगण नं0 1 ता 7, 9 ता 22 की तामील साधारण तरीके से न हो पा रही है। इसलिए अदालत हजा को यह पूर्ण विश्वास हो चुका है कि उपरोक्त प्रत्यार्थीगणों की तामील साधारण तरीके से नहीं हो सकती।

अतः इस मुश्त्री मुनादी/इश्तहार राजपत्र द्वारा उपरोक्त प्रत्यार्थीगणों को सूचित किया जाता है कि वे उक्त मुकद्दमा तकसीम की पैरवी बारे दिनांक 11—05—2022 को प्रातः 10.00 बजे अदालत हजा में व्यक्तिगत रूप से अथवा किसी अधिकृत एजेंट के माध्यम से या किसी अधिवक्ता के माध्यम से इस न्यायालय में उपस्थित आवें। गैरहाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी। बाद तारीख पेशी कोई उजर/एतराज काबिले गौर न होगा।

आज दिनांक 11—04—2022 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
डाडासीबा, जिला कांगड़ा (हि0 प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, डाडासीबा, जिला कांगड़ा (हि0 प्र0)

मु0 नं0 : 18/2020/एन0टी0

तारीख दायरा 03—02—2020

तारीख पेशी 11—05—2022

1. श्री दलीप चन्द पुत्र बाबू, वासी महाल गुरनवाड, तहसील डाडासीबा, जिला कांगड़ा (हि0 प्र0) प्रार्थी।

बनाम

1. सुरेन्द्र सिंह पुत्र अमर सिंह, 2. वीर जगमोहन पुत्र, 3. अचल पुत्रान सुदर्शन कुमार, 4. कुशल देव पुत्र दसौंधी राम 5. राये सिंह पुत्र दलीपू, 6. सुमित, 7. सचिन पुत्रान होशियार सिंह, 8. दर्शना देवी पत्नी स्व0 श्री होशियार सिंह, 9. दिनेश कुमार पुत्र अजमेर सिंह, 10. कमलेश कुमारी पत्नी स्व0 श्री अजमेर सिंह, 11. भाग सिंह पुत्र इन्द्र सिंह, 12. राम पाल पुत्र वजीर चन्द, 13. विजय कुमार, 14. संजीव कुमार पुत्रान सुखदेव, 15. उर्मिला रानी पत्नी सुरजीत सिंह, 16. जोगिन्द्र सिंह, 17. रघुवीर सिंह, 18. दिनेश कुमार पुत्रान काका राम, 19. जसवीर सिंह पुत्र रतन चन्द, 20. हेम चन्द पुत्र मोती राम, 21. नरेश कुमार पुत्र हेम चन्द, 22. रविन्द्र कुमार पुत्र प्रशोतम दास, 23. विमल कुमार, 24. पुनीत कुमार पुत्रान जगदीश राम, 25. अश्वनी कुमार पुत्र वृज लाल, 26. अशोक कुमार, 27. सुर्जन कुमार पुत्रान हरू, 28. जीवन कुमार पुत्र जैसी राम, 29. रणजीत सिंह पुत्र वावू राम, 30. राज कुमार, 31. अवतार सिंह, 32. सुशील कुमार, 33. पंकज कुमार पुत्रान आत्मा राम, 34. जसवन्त सिंह पुत्र पुन्नू, 35. आशा देवी पत्नी जसवन्त सिंह, 36. भजन दास पुत्र वावू, 37. व्यासा देवी पत्नी स्व0 श्री भागू, 38. सत्या देवी पत्नी प्रकाश चन्द, 39. भजन दास पुत्र भागू, 40. व्यासा देवी पत्नी स्व0 श्री भागू, 41. महिन्द्र सिंह पुत्र व 42. संतोष कुमार, 43. जैसी राम, 44. सुरम सिंह पुत्रान जुल्फी, 45. देवी लाल पुत्र शिवू, समस्त वासीगण महाल गुरनवाड, तहसील डाडासीबा, जिला कांगड़ा (हि0 प्र0) प्रत्यार्थीगण।

उनवान मुकद्दमा.—प्रार्थना—पत्र तकसीम भूमि खेवट नं० 177, खतौनी नं० 256, खसरा कित्ता 01, रकबा तादादी 0-38-06 है० वाक्या महाल डाडासीबा, तहसील डाडासीबा, जिला कांगड़ा (हि० प्र०) अनुसार जमाबन्दी वर्ष 2014-15.

उपरोक्त प्रत्यार्थीगण नं० 1, 4, 6, ता 15, 18 ता 22, 24 ता 28 व 33 ता 45 ता 13 की तामील साधारण तरीके से नहीं हो पा रही है। इसलिए अदालत हजा को यह पूर्ण विश्वास हो चुका है कि उपरोक्त प्रत्यार्थीगणों की तामील साधारण तरीके से नहीं हो सकती.

अतः इस मुश्री मुनादी/इश्तहार राजपत्र द्वारा उपरोक्त प्रत्यार्थीगणों को सूचित किया जाता है कि वे उक्त मुकद्दमा तकसीम की पैरवी बारे दिनांक 11-05-2022 को प्रातः 10.00 बजे अदालत हजा में व्यक्तिगत रूप से अथवा किसी अधिकृत एजेंट के माध्यम से या किसी अधिवक्ता के माध्यम से इस न्यायालय में उपस्थित आवें। गैरहाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी। बाद तारीख पेशी कोई उजर/एतराज काबिले गौर न होगा।

आज दिनांक 11-04-2022 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
डाडासीबा, जिला कांगड़ा (हि० प्र०)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, जसवां, जिला कांगड़ा (हि० प्र०)

मुकद्दमा नं० : 05/T/C/2022

तारीख दायरा : 06-04-2022

तारीख पेशी : 12-05-2022

सुरजीवन सिंह पुत्र बुधि सिंह, वासी महाल बुहाला, तहसील जसवां, जिला कांगड़ा (हि० प्र०) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थीगण।

विषय.—प्रार्थना—पत्र राजस्व अभिलेख महाल बुहाला में नाम दुरुस्ती बारे।

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी के कार्यालय में प्रार्थना—पत्र मय ब्यान हल्फी इस आशय से गुजारा है कि उसका नाम राजस्व अभिलेख महाल बुहाला में सरजीवन सिंह पुत्र बुधि सिंह पुत्र रघुनाथ दर्ज है जबकि स्कूल प्रमाण—पत्र, आधार कार्ड व पैन कार्ड में सुरजीवन सिंह पुत्र बुधि सिंह दर्ज है। जोकि मेरा सही नाम है। प्रार्थी राजस्व अभिलेख महाल बुहाला में सरजीवन सिंह उपनाम सुरजीवन सिंह पुत्र बुधि सिंह पुत्र रघुनाथ के नाम की दुरुस्ती करवाना चाहता है।

अतः इस इश्तहार/नोटिस के माध्यम से समस्त जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम की दुरुस्ती बारे एतराज हो तो वह दिनांक 12-05-2022 को अधोहस्ताक्षरी के कार्यालय में हाजिर आकर अपना उजर/एतराज पेश कर सकते हैं उजर/एतराज प्रस्तुत न करने की सूरत में उपरोक्त नाम दुरुस्त करने के आदेश पारित कर दिये जाएंगे।

आज दिनांक 06-04-2022 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
जसवां, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 10/NT/2022

तारीख पेशी : 13-05-2022

श्री रवि शर्मा पुत्र श्री सुखदेव, निवासी महाल थलाकन, डा0 सुरानी, मौजा गन्धवाड़, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)।

बनाम

आम जनता

उनवान मुकद्दमा.— नाम दुरुस्ती।

प्रार्थी श्री रवि शर्मा पुत्र श्री सुखदेव, निवासी महाल थलाकन, डा0 सुरानी, मौजा गन्धवाड़, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0) ने स्वयं उपस्थित होकर प्रार्थना-पत्र नाम दुरुस्ती प्रस्तुत किया है कि उसका नाम पटवार वृत्त गन्धवाड़ के राजस्व महाल थलाकन के अभिलेख में गलती से रवि कुमार पुत्र सुखदेव दर्ज है जबकी परिवार रजिस्टर, आधार कार्ड, पैन कार्ड, ड्राइविंग लाईसेंस व अन्य कागजातों में उसका नाम रवि शर्मा पुत्र सुखदेव दर्ज है, जोकि उसका सही नाम है। दो अलग-अलग नाम हो जाने के कारण प्रार्थी को दिक्कतों का सामना करना पड़ रहा है। अतः प्रार्थी का आग्रह है कि उपरोक्त वर्णित महाल के राजस्व अभिलेख में उसका नाम रवि कुमार उपनाम रवि शर्मा पुत्र सुखदेव दर्ज किया जाये।

अतः सर्वसाधारण को सुनवाई हेतु बजरिये इश्तहार व मुस्त्री मुनादी द्वारा सूचित किया जाता है कि इस नाम दुरुस्ती के सम्बन्ध में किसी प्रकार का उजर/एतराज हो तो वह दिनांक 13-05-2022 को असालतन व वकालतन पेश होकर अपना एतराज दर्ज करवा सकता है। उसके उपरान्त कोई भी उजर/एतराज जेरे समायत न होगा तथा प्रार्थी श्री रवि शर्मा पुत्र श्री सुखदेव, निवासी महाल थलाकन, डा0 सुरानी, मौजा गन्धवाड़, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0) का नाम राजस्व महाल थलाकन के अभिलेख में रवि कुमार उपनाम रवि शर्मा पुत्र सुखदेव दर्ज करने के आदेश पारित कर दिये जायेंगे।

आज दिनांक 13-04-2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)।

**ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला,
जिला कांगड़ा (हि0प्र0)**

मुकद्दमा नं0 : /NT/22

Sh. Sushant Karki s/o Sh. Suresh Karli, r/o V.P.O. Dari, Tehsil Dharamshala, District Kangra (H.P.).

बनाम

आम जनता

विषय.—प्रार्थना-पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

Sh. Sushant Karki s/o Sh. Suresh Karli, r/o V.P.O. Dari, Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में शपथ-पत्र सहित मुकद्दमा दायर किया है कि मेरे पुत्र का जन्म दिनांक 14-01-2019 को हुआ है परन्तु एम0 सी0 धर्मशाला/ग्राम पंचायत में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त Shivang Karki s/o Sh. Sushant Karki के जन्म पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 15-05-2022 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ-पत्र जन्म तिथि 14-01-2019 को पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 06-04-2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित / —
सहायक समाहर्ता द्वितीय श्रेणी,
एवं कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

Office of the Sub-Divisional Magistrate, Arki, District Solan (H. P.)

Case No.
06/2022

Date of Institution
07-04-2022

Date of Decision
Fixed for hearing on 10-05-2022

Smt. Shakuntla w/o Shri Dharampal, r/o Village Kandryali, P.O. Bhararighat, Tehsil Arki, District Solan, Himachal Pradesh

Versus

General Public

Regarding delayed registration of Birth event under section 13(3) of the Birth and Death Registration Act, 1969 and section 9(3) of H.P. Birth & Death Registration Rule, 2003.

Proclamation

Smt. Shakuntla w/o Shri Dharampal, r/o Village Kandryali P.O. Bhararighat, Tehsil Arki, District Solan, Himachal Pradesh has filed a case under section 13(3) of the Birth & Death Registration Act, 1969 and section 9(3) of H.P. Birth & Death Registration Rule, 2003 alongwith affidavits and other documents stating therein that her daughter namely KAJAL was born on 27-04-2010 at Village Kandryali, P.O. Bhararighat, Tehsil Arki, but his birth has not been entered in the records of Gram Panchayat Daseran, Tehsil Arki, District Solan (H.P.) as per certificate No. 10 issued by the Registrar, Birth and Death Registration, G.P. Daseran, Tehsil Arki.

Therefore, by this proclamation, the general public is hereby informed that if any person having objection for registration of delayed birth event of KAJAL d/o Sh. Dharampal & Smt. Shakuntla, may submit their objections in writing in this office on or before 10-05-2022 at 10.00 A.M. failing which no objection will be entertained after date of hearing.

Given under my hand and seal of this office on this 07th day of April, 2022.

Seal.

Sd/-

*Sub-Divisional Magistrate,
Arki, District Solan (H. P.).*

Office of the Sub-Divisional Magistrate, Arki, District Solan (H. P.)

Case No.
07/2022

Date of Institution
07-04-2022

Date of Decision
Fixed for hearing on 10-05-2022

Smt. Shakuntla w/o Shri Dharampal, r/o Village Kandryali, P.O. Bhararighat, Tehsil Arki, District Solan, Himachal Pradesh

Versus

General Public

Regarding delayed registration of Birth event under section 13(3) of the Birth and Death Registration Act, 1969 and section 9(3) of H.P. Birth & Death Registration Rule, 2003.

Proclamation

Smt. Shakuntla w/o Shri Dharampal, r/o Village Kandryali, P.O. Bhararighat, Tehsil Arki, District Solan, Himachal Pradesh has filed a case under section 13(3) of the Birth & Death Registration Act, 1969 and section 9(3) of H.P. Birth & Death Registration Rule, 2003 alongwith affidavits and other documents stating therein that her daughter namely ANJALI was born on 06-03-2012 at Village Kandryali, P.O. Bhararighat, Tehsil Arki, but his birth has not been entered in the records of Gram Panchayat Daseran, Tehsil Arki, District Solan (H.P.) as per certificate No. 10 issued by the Registrar, Birth and Death Registration, G.P. Daseran, Tehsil Arki.

Therefore, by this proclamation, the general public is hereby informed that if any person having objection for registration of delayed birth event of ANJALI d/o Sh. Dharampal & Smt. Shakuntla, may submit their objections in writing in this office on or before 10-05-2022 at 10.00 A.M. failing which no objection will be entertained after date of hearing.

Given under my hand and seal of this office on this 07th day of April, 2022.

Seal.

Sd/-

*Sub-Divisional Magistrate,
Arki, District Solan (H. P.).*

Office of the Sub-Divisional Magistrate, Arki, District Solan (H. P.)Case No.
05/2022Date of Institution
07-04-2022Date of Decision
Fixed for hearing on 10-05-2022

Smt. Shakuntla w/o Shri Dharampal, r/o Village Kandryali, P.O. Bhararighat, Tehsil Arki, District Solan, Himachal Pradesh

Versus

General Public

Regarding delayed registration of Birth event under section 13(3) of the Birth and Death Registration Act, 1969 and section 9(3) of H.P. Birth & Death Registration Rule, 2003.

Proclamation

Smt. Shakuntla w/o Shri Dharampal, r/o Village Kandryali, P.O. Bhararighat, Tehsil Arki, District Solan, Himachal Pradesh has filed a case under section 13(3) of the Birth & Death Registration Act, 1969 and section 9(3) of H.P. Birth & Death Registration Rule, 2003 alongwith affidavits and other documents stating therein that her son namely AKSHAY KUMAR was born on 17-09-2008 at Village Kandryali, P.O. Bhararighat, Tehsil Arki, but his birth has not been entered in the records of Gram Panchayat Daseran, Tehsil Arki, District Solan (H.P.) as per certificate No. 10 issued by the Registrar, Birth and Death Registration, G.P. Daseran, Tehsil Arki.

Therefore, by this proclamation, the general public is hereby informed that if any person having objection for registration of delayed birth event of AKSHAY KUMAR s/o Sh. Dharampal & Smt. Shakuntla, may submit their objections in writing in this office on or before 10-05-2022 at 10.00 A.M. failing which no objection will be entertained after date of hearing.

Given under my hand and seal of this office on this 07th day of April, 2022.

Seal.

Sd/-

*Sub-Divisional Magistrate,
Arki, District Solan (H. P.).*

Office of the Sub-Divisional Magistrate, Arki, District Solan (H. P.)Case No.
08/2022Date of Institution
07-04-2022Date of Decision
Fixed for hearing on 10-05-2022

Sh. Jagdish Chand s/o Late Sh. Nazru, r/o Village Turu, P.O. Dhundan, Tehsil Arki, District Solan, Himachal Pradesh

Versus

General Public

Regarding delayed registration of Birth event under section 13(3) of the Birth and Death Registration Act, 1969 and section 9(3) of H.P. Birth & Death Registration Rule, 2003.

Proclamation

Sh. Jagdish Chand s/o Late Sh. Nazru, r/o Village Turu, P.O. Dhundan, Tehsil Arki, District Solan, Himachal Pradesh has filed a case under section 13(3) of the Birth & Death Registration Act, 1969 and section 9(3) of H.P. Birth & Death Registration Rule, 2003 alongwith affidavits and other documents stating therein that his brother namely Late Sh. Chet Ram has expired on 15-10-1975 at Village Turu, P.O. Dhundan, Tehsil Arki, but his death has not been entered in the records of Gram Panchayat Dhundan, Tehsil Arki, District Solan (H.P.) as per certificate No. 10 issued by the Registrar, Birth and Death Registration, G.P. Dhundan, Tehsil Arki.

Therefore, by this proclamation, the general public is hereby informed that if any person having objection for registration of delayed death event of Late Sh. Chet Ram s/o Sh. Late Sh. Nazru, may submit their objections in writing in this office on or before 10-05-2022 at 10.00 A.M. failing which no objection will be entertained after date of hearing.

Given under my hand and seal of this office on this 07th day of April, 2022.

Seal.

Sd/-

*Sub-Divisional Magistrate,
Arki, District Solan (H. P.).*

In the Court of Executive Magistrate (Tehsildar) Baddi, District Solan (H.P.)

Case No. : 07 /2022

Date of Institution : 16-04-2022

Date of Decision :

Sh. Sukhvasi s/o Shri Bhagirath, r/o Vill. P.O. Bahrojpur, Tehsil Patiyali, District Kasganj, Uttar Pradesh.

Versus

General Public through : M.C. Baddi, Tehsil Baddi, District Solan (H.P.).

Application under section 13(3) of H.P. Birth and Death Registration Act, 1969.

Sh. Sukhvasi s/o Shri Bhagirath, r/o Vill. P.O. Bahrojpur, Tehsil Patiyali, District Kasganj, Uttar Pradesh has filed an application under section 13(3) of the Birth & Death Registration Act, 1969 stating therein that his son Surya Pratap Singh was born on dated 05-11-2020 at Billanwali Labana, Tehsil Baddi, District Solan, Himachal Pradesh but after his birth could not be registered in the M.C. Baddi, Tehsil Baddi, District Solan (H.P.) within stipulated period. He prayed for passing necessary orders to the Registrar , Birth & Death M.C. Baddi, Tehsil Baddi, District Solan for entering the same.

Therefore, by this proclamation, the general public is hereby informed that any person having objection regarding registering the birth of Surya Pratap Singh s/o Sh. Sukhvasi and Smt. Reenu may file his objection in this court on or before 17-05-2022, failing which no objection shall be entertained.

Given under my hand and seal on this 16th April, 2022

Seal.

Sd/-,
*Executive Magistrate (Tehsildar),
Baddi, District Solan (H.P.).*

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Kasauli,
District Solan (H.P.)**

1. Sh. Munish Dev Katoch s/o Sh. Kamal Dev Katoch, aged 37 years, D.O.B. 27-03-1983, r/o Village Nalwa, P.O. & Tehsil Kasauli, District Solan (H.P.).

2. Malvika d/o Sh. Gopi Ram, aged 32 years D.O.B. 26-03-1989, r/o MES Colony Kumarhatti, Tehsil & District Solan (H.P.).

Versus

General Public

An application under section 15 of the Special Marriage Act, 1954 has been received in this court from Sh. Munish Dev Katoch s/o Sh. Kamal Dev Katoch, aged 37 years, D.O.B. 27-03-1983, r/o Village Nalwa, P.O. & Tehsil Kasauli, District Solan (H.P.) and Malvika d/o Sh. Gopi Ram, aged 32 years D.O.B. 26-03-1989, r/o MES Colony Kumarhatti, Tehsil & District Solan (H.P.) to get their marriage u/s 15 of the Special Marriage Act, 1954. Before taking further action in the said application, objections from the general public are invited for the registration of this marriage, objections in this regard should reach to this court on or before 20-05-2022 failing which the marriage shall be got registered as per the provisions of the law.

Issued on 16-04-2022 my hand and seal of the court.

Seal.

Dr. SANJEEV DHIMAN (HAS),
*Marriage Officer-cum-Sub-Divisional Magistrate,
Kasauli, District Solan (H.P.).*

CHANGE OF NAME

I, Mahinder Kumar, r/o Village Bawra, P.O. Shamti, Tehsil & District Solan declares that in my son Abhay Thakur's school record my and my wife name was wrongly entered as Mohinder & Malika our actual name is Mahinder Kumar & Malika Devi. Please note.

MAHINDER KUMAR,
*r/o Village Bawra, P.O. Shamti,
Tehsil & District Solan, Himachal Pradesh.*

नाम परिवर्तन

मैं, प्रीतम चंद पुत्र राम लोक नगवाल, गांव व डाकघर बसंतपुर, तहसील सरकाघाट, जिला मण्डी, हिमाचल प्रदेश वर्तमान वर्किंग आइटीबीपी एसएचक्यू, शिमला तारा देवी, जिला शिमला घोषणा करता हूं कि मेरा व मेरे पिता का नाम मेरे सभी डॉक्यूमेंट व दसवीं के सर्टिफिकेट में प्रीतम चंद है गलती से मेरा नाम सर्विस बुक में प्रीतम चंद वर्मा दर्ज हो गया है और मेरे पिता का नाम राम लोक नगवाल है उनका नाम भी मेरी सर्विस बुक में गलती से राम लोक वर्मा दर्ज हो गया है। कृपया मेरे सर्विस बुक में मेरा नाम प्रीतम चंद व मेरे पिता का नाम राम लोक नगवाल सही दर्ज किया जाए।

प्रीतम चंद,
पुत्र राम लोक नगवाल,
गांव व डाकघर बसंतपुर,
तहसील सरकाघाट, जिला मण्डी, हिमाचल प्रदेश।

नाम परिवर्तन

मैं, Ex-CHELP No. 056838B, लाल चन्द पुत्र श्री किरु राम, गांव व डाकघर सरोत्री, तहसील बड़ोह, जिला कांगड़ा, हिमाचल प्रदेश घोषणा करता हूं कि मेरा सही नाम Lal Chand है, परन्तु मेरे डिस्चार्ज रिकार्ड (ESM in Record) में मेरा नाम Lal Chand Kirhu Ram दर्ज है जोकि गलत है। अतः मेरे डिस्चार्ज रिकार्ड (ESM in Record) में मेरा सही नाम Lal Chand दर्ज किया जाए।

लाल चन्द,
पुत्र श्री किरु राम,
गांव व डाकघर सरोत्री,
तहसील बड़ोह, जिला कांगड़ा, हिमाचल प्रदेश।

